HEARING DATE AND TIME: June 13, 2012 at 10:00 a.m. (Eastern Time)

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Robert J. Lemons

Attorneys for Lehman Brothers Holdings Inc.
and Certain of its Affiliates

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
	:	
LEHMAN BROTHERS HOLDINGS INC., *et al.*,	:	**08-13555 (JMP)**
	:	
Debtors.	:	**(Jointly Administered)**

REPLY TO RESPONSE OF WESTLB AG TO DEBTORS' FORTIETH OMNIBUS OBJECTIONS TO CLAIMS (LATE-FILED CLAIMS) AS TO CLAIM NO. 36789 AND OBJECTION TO MOTION TO DEEM CLAIM NO. 36789 TIMELY FILED

TO THE HONORABLE JAMES M. PECK,
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc. ("LBHI") as Plan Administrator[1] under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors* [ECF No. 22737] (the "Plan") for the entities in the above referenced chapter 11 cases (collectively, the "Chapter 11 Estates"), files this reply and objection (together, the "Reply") to the response of West LB AG (f/k/a Westdeutsche Landesbank Giorzentrale) ("WestLB") to the Debtors' Fortieth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 11305] (the "Omnibus Objection") and WestLB's motion to deem Claim No. 36789 timely filed (the response and motion, together, the "Response") and respectfully represent as follows:

[1] Capitalized terms not defined herein shall have the meaning ascribed to them in the Omnibus Objection.

PRELIMINARY STATEMENT

1. WestLB asserts that it is entitled to file a late claim against LBHI, Claim No. 36789 (the "Late Claim"), and that its delay in timely filing the Late Claim is excusable because it allegedly did not receive actual notice of the Bar Date (defined below). As evidenced by the corrected affidavit of service of Epiq Bankruptcy Solutions, LLC ("Epiq"), the claims and noticing agent for the Chapter 11 Estates, WestLB did receive actual notice of the Bar Date at its address in Düsseldorf, Germany, as well as actual notice at its New York and London offices and to its counsel of record. WestLB also had constructive notice of the Bar Date by the publication of notice of the Bar Date in various newspapers. Moreover, WestLB cannot credibly assert that it was unaware of the Bar Date because it timely filed three other proofs of claim in these cases in full compliance with the Bar Date Order. The sole reason WestLB has provided for submitting the Late Claim after the Bar Date – its alleged failure to receive notice of the Bar Date – is thus wholly without merit, and WestLB cannot satisfy the "hard line" application of the "excusable neglect" standard followed by the Second Circuit and by this Court in these chapter 11 cases. Its failure to timely file the Late Claim was entirely within its own control. For these reasons, the Late Claim should be expunged.

BACKGROUND

Chapter 11 Case Background

2. Commencing on September 15, 2008 and periodically thereafter, (as applicable, the "Commencement Date"), LBHI and certain of its subsidiaries (collectively, the "Debtors") commenced with this Court voluntary cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to the Rule 1015(b) of the Federal Rules of Bankruptcy Procedure Bankruptcy (the "Bankruptcy Rules").

3. On December 6, 2011, the Court entered the order confirming the Plan. The Plan became effective on March 6, 2012 (the "Effective Date"). Pursuant to the Plan, the Plan Administrator is authorized to interpose and prosecute objections to claims filed against the Chapter 11 Estates.

The Bar Date

4. By order dated July 2, 2009 (the "Bar Date Order"), the Court established (a) September 22, 2009 at 5:00 p.m. as the deadline (the "Bar Date") for filing proofs of claim against any of the Debtors in these chapter 11 cases and (b) October 22, 2009 at 5:00 p.m. as the deadline for the filing of Derivative Questionnaires and Guarantee Questionnaires against the Chapter 11 Cases in these chapter 11 cases. (Bar Date Order at 2, 7-8.) The Bar Date Order expressly provides that "any holder of a claim against the Debtors who is required, but fails to file a proof of such claim in accordance with the Bar Date Order . . . including filling out the Derivative Questionnaire or the Guarantee Questionnaire . . . shall forever be barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim with respect thereto) . . . ." (*Id.* at 9-10.) A copy of the Bar Date Order was made publicly available at http://www.lehman-docket.com.

5. In addition to providing actual notice of the deadline to file proofs of claim (the "Bar Date Notice") by mail to all parties known to the Debtors as having potential claims against the Debtors' estates, the Bar Date Notice was published in The New York Times (International Edition), The Wall Street Journal (International Edition), and The Financial Times. The Bar Date Notice prominently stated the Bar Date and in bold-face type that "any creditor who fails to file a Proof of Claim in accordance with the Bar Date Order on or before the Bar Date . . . for any claim such creditor holds or wishes to assert against the Debtors, will be forever barred,

estopped, and enjoined from asserting such claim (and from filing a Proof of Claim with respect to such claim) . . . ." (*Id.* at 6.) While only 35 days of notice of a bar date is recommended by the Second Amended Procedural Guidelines for Filing Requests for Bar Date Orders in the United States Bankruptcy Court for the Southern District of New York, in this case, the Debtors provided creditors more than 71 days notice of the Bar Date. The Bar Date occurred more than a year after the Commencement Date, and 82 days after the entry of the Bar Date Order, providing ample time for creditors to determine, prepare, and file their claims against the Debtors. More than 66,000 proofs of claim were received on or before the Bar Date.

The Late Claim

6. Lehman Brothers Finance, S.A. ("LBFSA") and WestLB entered into a standard 1992 International Swap Deal Association, Inc. ("ISDA") Master Agreement dated May 22, 2006 (the 1992 ISDA Master Agreement and schedule thereto collectively referred to as, the "Master Agreement"). LBHI acted as credit support provider for the payment obligations of LBFSA under the Master Agreement. On September 16, 2008, WestLB sent a correspondence to LBFSA purporting to designate September 17, 2008, as an Early Termination Date under the Master Agreement based on the commencement of LBHI's chapter 11 case. On December 4, 2008, WestLB sent LBFSA notice of the amount due ("Valuation Statement") to WestLB on such Early Termination Date and asserted that WestLB is owed $21,252,180.52.

7. On October 5, 2009, thirteen days after the applicable Bar Date, WestLB submitted the Late Claim against LBHI in the amount of $21,252,180.52 based on termination of the derivatives transactions under the Master Agreement.

THE WESTLB CLAIM SHOULD NOT BE DEEMED TIMELY FILED

A. WestLB Received Notice of the Bar Date

8. WestLB's only stated reason for delay in filing the Late Claim is that the Chapter 11 Estates allegedly failed to provide notice of the Bar Date to the attention of WestLB's legal department at the address specified in the Master Agreement and, as a result, WestLB did not receive actual notice of the Bar Date. However, WestLB did receive actual notice of the Bar Date. It also had constructive notice of the Bar Date and managed to comply with the Bar Date Order and timely file three other proofs of claim in these cases. As such, WestLB has failed to assert even a colorable argument that its failure to file a timely proof of claim constitutes "excusable neglect" under the strict standards established by the Supreme Court and the Second Circuit.

9. The Supreme Court has held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Additionally, Bankruptcy Rule 2002(g)(2) provides that when notice is served on a creditor by mail and that creditor has not filed a request designating a mailing address, then notice shall be mailed "to the address shown on the list of creditors or schedule of liabilities, whichever is filed later." Fed. R. Bankr. P. 2002(g)(2).

10. WestLB argues that the attempted service of the Bar Date Notice on WestLB was incorrect because a copy of the Bar Date Order allegedly was delivered to Düsseldorf, Georgia – not Düsseldorf, Germany – and it was not addressed to the attention of WestLB's legal department. WestLB makes this allegation based upon the original affidavit of service filed on July 10, 2009 by Herb Baer, director of client services at Epiq [ECF No. 4349] (the "Original Affidavit of Service"). The Original Affidavit of Service incorrectly listed the

address of certain parties that were served and provided that all bar date notices that were sent to parties located in Düsseldorf, Germany, were sent to addresses in Düsseldorf, Georgia. As described in further detail in the declaration of Herb Baer filed on June 8, 2012 [ECF No. 28546], this systemic typographical error occurred in the creation of the Original Service Affidavit, but did not occur in the actual mailing of the Bar Date Order and Bar Date Notice. In fact, bar date notices were sent to the correct addresses for creditors located in Düsseldorf, Germany. To correct any errors on the Original Affidavit of Service, on June 3, 2010, Mr. Baer filed a corrected affidavit of service ("Corrected Affidavit of Service") [ECF No. 9395], attached hereto as Exhibit A,[2] which fully superseded the Original Affidavit of Service and noted that the Bar Date Order was sent to the true and correct address of WestLB in Germany. Furthermore, the Corrected Affidavit of Service stated that all envelopes utilized in the service of the Bar Date Order and Bar Date Notice contained the following legend: "LEGAL DOCUMENTS ENCLOSED. PLEASE DIRECT TO ATTENTION OF ADDRESSEE, PRESIDENT OR LEGAL DEPARTMENT." *See Corrected Affidavit of Service* ¶ 7.

11. Based on the Corrected Affidavit of Service, it is clear that WestLB was served with actual notice of the Bar Date Order at its office in Düsseldorf, Germany. "Courts uniformly presume that an addressee receives a properly mailed item when the sender presents proof that it properly addressed, stamped, and deposited the item in the mail." *In re Dana Corp.*, 2007 Bankr. LEXIS 1934, at *12-13 (Bankr. S.D.N.Y. May 30, 2007); *Hagner v. United States*, 285 U.S. 427, 430, 52 S. Ct. 417, 76 L. Ed. 861 (1932) ("the rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed").

[2] Due to the voluminous size of the Corrected Affidavit of Service, the exhibit annexed thereto has been modified to only incorporate the relevant pages.

"While the presumption is a rebuttable one, it is a very strong presumption and can only be rebutted by specific facts and not by invoking another presumption and not by mere affidavit to the contrary." *In re Dana Corp.*, 2007 Bankr. LEXIS 1934, at *13 (listing cases).

12. WestLB has failed to submit sufficient evidence to rebut the presumption of receipt of the Bar Date Order. The Second Circuit has required more evidence than a claimant's mere denial of receipt to rebut the presumption that notice was received. *See Meckel v. Continental Resources Co.*, 758 F. 2d 811, 817 (2d Cir. 1985); *see also, In re Dana Corp.*, 2007 Bankr. Lexis 1934 at *14 (Bankr. S.D.N.Y. 2007) (stating that "it is a very strong presumption and can only be rebutted by specific facts and not by invoking another presumption and not by a mere affidavit to the contrary."); *In re Enron Corp.*, 2003 Bankr. Lexis 2110 at *10 (finding that a CFO's "self serving declaration asserting non receipt of the Notice Package is insufficient to rebut th[e] presumption of receipt."); *In re Mid-Miami Diagnostics, LLP*, 195 B.R. 20 (Bankr. S.D.N.Y. 1996) (stating that "[a] creditor's denial of receipt, standing alone, does not rebut the presumption that the mail was received, but merely creates a question of fact."); *Dependable Insurance Co. v. Horton (In re Horton)*, 149 B.R. 49, 58 (Bankr. S.D.N.Y. 1992) (finding that an addressee did not rebut the presumption of receipt . . . and further, its affidavits denying receipt, "[stood] merely as general denials" and were insufficient to rebut the presumption). To date, WestLB has only submitted the Original Affidavit of Service and an affidavit from Michael Cherubim, the Executive Director of WestLB, generally denying receipt of the Bar Date Order.

13. Additionally, the Response ignores service of the Bar Date Notice and Bar Date Order on WestLB's New York and London offices and on WestLB's counsel of record, as evidenced by the Corrected Affidavit of Service. WestLB does not argue that the Bar Date Notice and Bar Date Order were improperly addressed, stamped, and deposited in the mail system with

respect to its New York and London locations. Once a bankruptcy notice is delivered, it is the responsibility of the creditor to distribute such notice to the appropriate party within its organization. *In re Drexel Burnham Lambert Group, Inc.*, 129 B.R. 22 (Bankr. S.D.N.Y 1991); *see also In re Petroleum Prod. Mgmt. Co.*, 240 B.R. 407, 414-15 (Bankr. D. Kan. 1999) ("A creditor who chooses to operate its business by dividing its activities into various departments cannot shield itself against notice properly sent to the creditor in its name and at its place of business."). Thus, upon receipt of the Bar Date Notice, it was the responsibility of WestLB's personnel to route such notice appropriately within WestLB.

14. The court's decision in *Drexel* is particularly instructive here. In *Drexel*, Barclays Bank PLC ("Barclays") moved the court to enlarge the time to file a proof of claim, arguing that the appropriate office to deal with such notice was located in London and did not receive notice of the bar date. *Id*. The debtors in that case served notice of the bar date on Barclays at its offices in Connecticut, New York City, and Australia. *Id*. at 24. Barclays conceded receipt of actual notice of the bar date at its offices in New York and in Australia. *Id.* The court also presumed receipt by Barclays at its Connecticut office because Barclays did not assert that the mailing of the bar date notice to such Connecticut office was addressed improperly. *Id*. Barclays, however, argued that notice was improper because notice of the bar date should have been sent to Barclays at its office in London. *Id.* The court held that a "worldwide banking institution" such as Barclays is responsible "for having adequate systems in place to ensure that legal notices and other communications reach the appropriate parts of its business empire." *Id.* Accordingly, Barclays London received proper notice of the bar date vis-à-vis the notice that was provided to Barclays' offices in New York, Connecticut, and Australia. *Id.*

15. WestLB also argues that it did not receive adequate notice of the Bar Date because notice of the Bar Date was not addressed to the legal department, as required by Part 4 of the Master Agreement. This argument confuses the requirements of due process with the requirements of the Master Agreement. The standard of due process as set forth in *Mullane* does not require compliance with the notice provisions of the Master Agreement – only that notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *See Mullane*, 339 U.S. at 314. This Court has previously rejected a different creditor's argument that notice of the Bar Date was inadequate because it was not served on a particular department in its organization. *See In re Lehman Bros. Holdings Inc.* Hr'g Tr. 74:17-18, Feb. 22, 2012 (finding that failure to route notice within the organization "appears to be a situation of complete and absolute neglect and inexcusable inefficiency.") attached hereto as Exhibit B. Consistent with this Court's prior findings and the court's decision in *Drexel*, this Court should find that WestLB received proper notice vis-à-vis actual receipt of notice at WestLB's New York and London addresses, and to its counsel of record. *Id.*

16. The *Drexel* Court also considered the debtors' publication of the bar date, and held that Barclays received not only actual notice by mail, but also actual notice by publication. *Id.* at 24-25. Consequently, the Court was satisfied that Barclays received adequate and legally sufficient notice of the claims bar date to timely file a proof of claim. *Id.* As set forth above, the Chapter 11 Estates published notice of the Bar Date in three international and widely distributed newspapers, each of which is circulated throughout Germany. Thus, given that WestLB received actual notice of the Bar Date by mail and by publication notice, this Court should find that WestLB received adequate and sufficient notice of the Bar Date to timely file the Late Claim.

17. Furthermore, WestLB is a sophisticated party that has filed three other timely proofs of claim against the Chapter 11 Estates. On August 12, 2009, WestLB submitted proof of claim number 8103, and on September 22, 2009, WestLB hand delivered proofs of claim numbers 30100 and 30101 (collectively, the "Additional Claims").[3] Two of the Additional Claims, like the Late Claim, are based on terminated derivatives transactions in connection with ISDA agreements. Accordingly, it is inconceivable that WestLB was unaware of the Bar Date.

B. WestLB Cannot Demonstrate Excusable Neglect

18. WestLB also argues that it should be able to file a claim under the excusable neglect standard of Bankruptcy Rule 9006(b). The Bankruptcy Rules direct a bankruptcy court to establish bar dates in chapter 11 cases. Bankruptcy Rule 3003(c)(3) provides that the bankruptcy court "for cause shown may extend the time within which proofs of claim or interest may be filed." Fed. R. Bankr. P. 3003(c)(3). Given the critical importance of the bar date to the successful administration of a chapter 11 case, requests for extensions of time to file proofs of claim are "strictly scrutinized" by courts. *Florida Dept. of Ins. v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.),* 148 B.R. 1002, 1005 (S.D.N.Y. 1993).

> 'The setting of a bar date is an important event in Chapter 11 cases. The bar order by forcing creditors to make known their claims against the estate, enables the bankruptcy judge to tally up the debtor's assets and liabilities so that a reorganization plan can be developed.' Thus, it may be said that harm to creditors who have acted in reliance on the certainty of a firm bar date is precisely the reason why an [*sic*] motion to extend the bar date must be strictly scrutinized and may be granted only if excusable neglect is found in 'extraordinary circumstances.'

[3] Reference to proofs of claim numbers 8103, 30100 and 30101 as "timely filed" is not intended to waive any rights of the Plan Administrator to object to such claims on any basis, including, without limitation, compliance with the Bar Date Order.

Id. (quoting *Hooker Investments, Inc.*, 122 B.R. 659, 664 (S.D.N.Y. 1991), *appeal denied*, 937 F.2d 833 (2d Cir. 1991)). Bankruptcy Rule 9006(b) vests the decision to extend the bar date "squarely within the discretion of the bankruptcy judge." *Id*. at 1008.

19. Bankruptcy Rule 9006(b)(1) provides that "on motion made after the expiration of the specified period [the court may] permit the act to be done where the failure to act was the result of excusable neglect." Fed. R. Bankr. P. 9006(b)(1). The Supreme Court, in interpreting the term "excusable neglect," has held that the term "neglect" in its ordinary sense means "to give little attention or respect to a matter, or . . . to leave undone or unattended to esp[ecially] through carelessness . . . and encompasses both simple, faultless omissions to act and more commonly, omissions caused by carelessness." *Pioneer Inv. Serv. Co. v. Brunswick Assocs. L.P.*, 507 U.S. 380, 395 (1993). The determination of whether a claimant's neglect of a deadline is *excusable*, according to the *Pioneer* Court, however, is an equitable determination in which a court should consider all relevant circumstances surrounding the claimant's omission, including: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer*, 507 U.S. at 395.

20. In applying the *Pioneer* factors to determine whether a late-filed proof of claim was the result of "excusable neglect," the Second Circuit has taken a "hard line" approach that does not give the four factors equal weight but rather focuses on the third *Pioneer* factor—the reason for the delay in filing, including whether the cause of such delay was within the reasonable control of the movant—as the most critical. *In re Enron Corp.*, 419 F.3d 115, 122-24 (2d Cir. 2005). The Second Circuit has noted that the reason for this approach is that the other factors delineated in *Pioneer* – prejudice, length of delay and impact on judicial proceedings, and the

movant's good faith – will typically weigh in favor of the movant, and the court will therefore focus on the reason for the delay in filing. *Id*. at 122 (citing *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355 (2d Cir. 2003)).

21. This Court has followed the Second Circuit's "hard line" approach in applying the *Pioneer* factors in deciding numerous motions in this case. Only on two occasions, where "creditors consciously endeavored to comply with the bar date and established that their delay was the result of justifiable confusion over the application of the bar date to their particular claims," did this Court find the existence of excusable neglect. *In re Lehman Brothers Holdings Inc.*, 433 B.R. 113, 127 (Bankr. S.D.N.Y. 2010), *aff'd.* 445 B.R. 137 (S.D.N.Y. 2011). With respect to all other motions filed in this case seeking to have late filed claims deemed timely pursuant to Bankruptcy Rule 9006(b), this Court found that the delay in filing the late claims was within the control of the various movants and that "reasons offered by the Movants demonstrate a lack of care or thoughtful attention to the preparation and filing of their proofs of claim." *Id.* WestLB does not allege confusion regarding the application of the Bar Date Order, and WestLB's excuse does not relate to the bespoke provisions of the Bar Date Order regarding certain securities. As discussed below, the *Pioneer* factors, particularly the reason for WestLB's delay in filing the Late Claim, the prejudice to the Chapter 11 Estates, and the length of the delay, weigh heavily in favor of the Chapter 11 Estates. The Court should follow its prior decisions to grant the Omnibus Objection, and deny and overrule the Response.

a. WestLB's Reason for the Delay Was Solely Within WestLB's Control

22. As stated above, WestLB received actual notice of the Bar Date by mail at no less than two locations as well as by publication notice. Any of these forms of notice by itself should be held to be adequate notice. WestLB's failure to file the Late Claim in a timely manner was caused solely and entirely by WestLB's failure to adequately communicate within its own

organization. As discussed above, this Court has held that errors within the control of a claimant do not warrant a finding of excusable neglect.

23. Moreover, courts in the Second Circuit and elsewhere have held that such "office mixups, clerical mistakes, and failure to follow office procedure do not generally constitute excusable neglect." *In re Dana Corp.*, No. 06-10354 (BRL), 2008 WL 2885901, at *5 (Bankr. S.D.N.Y. July 23, 2008) (where notice of the bar date was inadvertently filed away without any action being taken, "movant's failure to file a timely proof of claim was entirely within his and his attorneys' reasonable control and does not constitute excusable neglect"); *Pruitt v. Metcalf Eddy Inc.*, No. 03 Civ. 4780 (DF), 2006 WL 760279, at *2 (S.D.N.Y. Mar. 24, 2006) (failure to timely file notice of appeal did not constitute excusable neglect where movant's counsel misplaced notice of appeal after arranging for attorney service to pick up and file it and then failed to follow up with attorney service to determine if the notice had been picked up and filed); *In re Chateaugay Corp.*, No. 92 Civ. 8722 (LJF), 1993 WL 1127180, at *6 (S.D.N.Y. Apr. 22, 1993) (movant's failure to timely file proof of claim due to failure of movant's own internal procedures in forwarding bankruptcy matters to its appropriate department for review did not constitute excusable neglect); *In re Kmart Corp.*, 381 F.3d 709 (7th Cir. 2004) (notwithstanding that movant missed bar date by only one day, movant's failure to file a timely proof of claim did not constitute excusable neglect where movant's counsel delegated the filing of the proof of claim to an office clerk, failed to follow up with the clerk to ensure that he had followed counsel's instructions on filing, and failed to take simple steps to confirm that the claim had been filed in a timely manner); *see also In re Enron Corp.*, No. 01-16034 (AJG), 2006 WL 898031, at *7 (Bankr. S.D.N.Y. Mar. 29, 2006) (State of Montana's delay in filing proof of claim for a damage award stemming from Federal Energy Regulatory Commission ("FERC") proceedings did not constitute excusable neglect where

State of Montana mistakenly assumed that FERC would protect its interests by filing a proof of claim on its behalf in the debtors' bankruptcy proceedings).

24. Furthermore, the facts and circumstances do not justify a finding of excusable neglect in this case. The Bar Date in LBHI's case occurred more than one year after the commencement of LBHI's chapter 11 proceeding and nearly a year after WestLB provided the Valuation Statement to LBFSA. WestLB is a sophisticated party that had ample time and access to relevant information to determine and timely file the claims that it held against the various Lehman entities.

b. Allowing WestLB's Claim Will Prejudice These Estates

25. "Prejudice" includes not only the harm to the debtor but also the adverse impact that a late claim may have on the judicial administration of the case, considering the size of the late claim in relation to the estate. *See In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995); *In re Drexel Burnham Lambert Group, Inc.*, 148 B.R. at 1007; *In re Alexander's Inc.*, 176 B.R. 715, 722 (Bankr. S.D.N.Y. 1995). More than 67,000 claims have been filed against the Chapter 11 Estates. Enforcement of the Bar Date is critical for the Chapter 11 Estates to manage the enormous task of processing the claims and to proceed with reorganization. This Court has already determined that in these cases "the enormity of the claims allowance process is self-evident, and prejudice needs to be evaluated in this unprecedented setting" and therefore, a "strict application of the Bar Date Order is needed to effectively manage the claims process and that permitting additional claims will lead to an opening of the claims process with foreseeable prejudice to the Debtors." *In re Lehman Brothers Holdings Inc.*, 433 B.R. at 120.

26. While WestLB argues that the Chapter 11 Estates will not be prejudiced by acceptance of the Late Claim because allowing the claim would not force creditors to return funds paid out by the Chapter 11 Estate in the initial distribution under the Plan or result in the Chapter

11 Estates having to adjust their distribution projections, this argument should be rejected. It ignores the sizeable amount of the Late Claim, which exceeds $21 million, and the cumulative effect that permitting the Late Claim will have on the estates. Permitting exceptions to the Bar Date does not impact "only one claim" and could have a significant economic impact on the estates, including the distributions available to creditors that exercised proper diligence in filing their claims. As this Court has recognized, "[t]he prejudice to the Debtors is not traceable to the filing of any additional single claim but to the impact of permitting exceptions that will encourage others to seek similar leniency." *Id.* at 121.

27. The status of these chapter 11 cases also confirms the prejudice that the Chapter 11 Estates will suffer if the Late Claim is allowed to proceed. The effective date for the Plan has occurred and distributions commenced on April 17, 2012. It would be inequitable and inappropriate for WestLB to receive distributions despite its filing a proof of claim after the Bar Date. Indeed, in addition to the size of the late claim in relation to the estate, the mere filing of a chapter 11 plan and disclosure statement are factors that are considered when determining whether a debtor will be prejudiced. *See In re Keene Corp.*, 188 B.R. at 910. If WestLB is granted leniency on the basis of excusable neglect, then holders of other late-filed claims will seek similar relief. A sudden increase in claims at this time would disrupt the orderly administration of the Chapter 11 Estates.

c. Length of Delay

28. The Late Claim was received by hand delivery on October 5, 2008, thirteen days after the Bar Date. Although the Chapter 11 Estates recognize that the length of delay as to the Late Claim is relatively minimal, WestLB never filed a motion with the Court seeking relief under Bankruptcy Rule 9006(b). It was only after the Chapter 11 Estates filed the Omnibus Objection, almost a year after the Bar Date, that these parties raised any argument that the Late

Claim should be deemed timely-filed. If parties are permitted to claim excusable neglect at this stage in these chapter 11 cases, then the purpose and effect of the Bar Date will have been diluted. Accordingly, this *Pioneer* factor weighs in favor of the Chapter 11 Estates.

d. The Good Faith Factor

29. The Plan Administrator has no evidence that WestLB acted in bad faith when it claimed excusable neglect. However, as discussed above, this factor typically weighs in favor of the party moving to file a late claim and hardly counterbalances the other three *Pioneer* factors which weigh in the Chapter 11 Estates' favor, particularly the "reason for delay" factor, discussed above, which the Second Circuit has deemed to be the most relevant and critical in the equitable determination of whether a movant's neglect is excusable. *See In re Enron Corp.*, 419 F.3d at 122-24.

RESERVATION OF RIGHTS

30. In the event that the Court denies the Omnibus Objection with respect to the Late Claim and/or grants the relief requested in the Response, the Plan Administrator reserves the right to object to the validity and amount of any claims that may be filed by WestLB.

31. The Plan Administrator reserves the right to conduct discovery as to the Late Claim and any matters raised in the Response and to supplement this filing as a result thereof.

II. CONCLUSION

WHEREFORE, for the reasons set forth above and in the Omnibus Objection, the Plan Administrator respectfully requests that the Court enter an order disallowing and expunging the Late Claim in its entirety and grant such other and further relief as the Court may deem just and appropriate.

Dated: June 8, 2012
New York, New York

/s/ Robert J. Lemons
Robert J. Lemons

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Lehman Brothers Holdings Inc. and Certain of its Affiliates

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
LEHMAN BROTHERS HOLDINGS INC., et al.,	:	**08-13555 (JMP)**
Debtors.	:	**(Jointly Administered)**
	:	**Ref. Docket Nos. 4271, 4349**

CORRECTED AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HERB BAER, being duly sworn, deposes and says:

1. I am over the age of eighteen years and am not individually a party to the above-captioned proceedings.

2. I am a Director of Client Services of Epiq Bankruptcy Solutions, LLC ("Epiq"), located at 757 Third Avenue, 3rd Floor, New York, New York 10017. Unless otherwise stated, I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

3. Lehman Brothers Holdings Inc. and its affiliated debtors (the "Debtors") retained Epiq as their Claims and Noticing Agent pursuant to an Order of the Court dated September 16, 2008. Accordingly, Epiq maintains the official claims register reflecting all claims listed in the Debtor's Schedules of Liabilities, as amended, and all filed proofs of claim (the "Claims Database"). Additionally, Epiq maintains a database of names and addresses of all potential creditors of the Debtors listed in their Creditor Matrix (together with the Claims Database, the "Master Mailing List").

4. On July 8, 2009, I caused to be served the "NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM", dated July 8, 2009 and a Proof of Claim Form upon on all names and addresses in the Master Mailing List as they existed at the time (the "Bar Date Mailing").

5. My "Affidavit of Service" dated July 10, 2009 details all parties that were served, and the manner in which they were served [Docket # 4349](the "Prior Service Affidavit"). The Prior Service Affidavit incorrectly listed the address of certain parties that were served. To correct any errors on the Prior Service Affidavit, I hereby submit this Corrected Affidavit of Service which fully supersedes the Prior Service Affidavit and hereby certify that all parties were served at the addresses included on the Master Mailing List as it existed as of July 8, 2009, which addresses are set forth on Exhibits D, E, and F, as described below.

6. The Bar Date Mailing was completed as follows:

On July 8, 2009, I caused to be served the:

a) "NOTICE OF DEADLINES FOR FILING PROOFS OF CLAIM", dated July 8, 2009, a copy of which is attached as Exhibit A (the "Bar Date Notice"),

b) "PROOF OF CLAIM" form, a copy of which is attached hereto as Exhibit B, (the "General Proof of Claim Form"), and

c) "PROOF OF CLAIM" form with a legend stating "Notice of Scheduled Claim", a copy of which is attached hereto as Exhibit C, (the "Schedule Proof of Claim Form")

by causing true and correct copies of the:

a) Bar Date Notice and a blank General Proof of Claim Form to be enclosed securely in separate postage pre-paid envelopes and delivered by first class mail to those parties listed on the attached Exhibit D,

b) Bar Date Notice and a General Proof of Claim Form, personalized to include the name and address of the creditor, to be enclosed securely in separate postage pre-paid envelopes and delivered by first class mail to those parties listed on the attached Exhibit E, and

c) Bar Date Notice and a Schedule Proof of Claim Form, personalized to include the name and address of the creditor and debtor, amount, nature, classification and description of the scheduled claim, to be enclosed securely in separate postage pre-paid envelopes and delivered by first class mail to those parties listed on the attached Exhibit F.

7. All envelopes utilized in the service of the foregoing contained the following legend: "LEGAL DOCUMENTS ENCLOSED. PLEASE DIRECT TO ATTENTION OF ADDRESSEE, PRESIDENT OR LEGAL DEPARTMENT."

Herb Baer

Herb Baer

Sworn to before me this
2nd day of June, 2010

Notary Public

SIDNEY J. GARABATO
NOTARY PUBLIC, STATE OF NEW YORK
No. 01GA6218946
Qualified in New York County
Commission Expires March 15, 2014

Claim Name	Address Information
CADWALADER, WICKERSHAM & TAFT LLP	WORLD FINANCIAL CENTER NEW YORK NY 10281
CADWALADER, WICKERSHAM & TAFT LLP	ATTN: HOWARD R. HAWKINS, JR., ESQ. (COUNSEL TO EXUM RIDGE CBO, SGS HY CRD FUND, AVIV LCDO, AIRLIE LCDO, PEBBLE CREEK AND WHITE MARLIN) ONE WOLRD FINANCIAL CENTER NEW YORK NY 10281
CADWALADER, WICKERSHAM & TAFT LLP	ATTN: MARK C. ELLENBERG 1201 F STREET N.W., SUITE 1100 WASHINGTON DC 20004
CADWALDER, WICKERSHAM & TAFT, LLP	ATTN: HOWARD R. HAWKINS, JASON JURGENS & ELLEN M. HALSTEAD, ESQ. (COUNSEL TO WESTLB AG, NEW YORK BRANCH) ONE WORLD FINANCIAL CENTER NEW YORK NY 10281
CAHILL GORDON & REINDEL LLP	ATTN: JOEL H. LEVITIN, STEPHEN J. GORDON (COUNSEL TO HYPO INVESTMENKBANK AG) EIGHTY PINE STREET NEW YORK NY 10005
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM	ATTN: THOMAS NOGUEROLA, SR. STAFF COUNSEL PO BOX 942707 SACRAMENTO CA 94229-2707
CB RICHARD ELLIS, INC	ATTN: WANDA N. GOODLOE, ESQ. 200 PARK AVENUE, 17TH FLOOR NEW YORK NY 10166
CHADBOURNE & PARKE LLP	ATTN: HOWARD SEIFE, DAVID M. LEMAY, & ANDREW ROSENBLATT (COUNSEL TO GLG PARTNERS LP) 30 ROCKEFELLER PLAZA NEW YORK NY 10012
CHAPMAN AND CUTLER LLP	ATTN: JAMES E. SPIOTTO, ANN E. ACKER, FRANLIN H. TOP, & JAMES HEISER 111 WEST MONROE STREET CHICAGO IL 60603
CHAPMAN AND CUTLER LLP	ATTN: JAMES HEISER (COUNSEL TO GENERAL HELICOPTERS INTERNATIONAL LLC) 111 WEST MONROE STREET CHICAGO IL 60603
CLEARY GOTTLIEB LLP	JAMES BROMLEY ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	LISA SCHWEITZER/LINDSEE GRANFIELD ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: LINDSEE P. GRANFIELD AND LISA M. SCHWEITZER (COUNSEL TO BARCLAYS CAPITAL, INC.) ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: THOMAS J. MALONEY, ESQ. (COUNSEL TO D.E. SHAW COMPOSITE PORTFOLIOS, LLC AND D.E. SHAW OCULUS PORTFOLIOS, LLC) ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: JAMES L. BROMLEY AND SEAN A. O'NEILL (COUNSEL TO HELLMAN & FRIEDMAN LLC) ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: CARMINE D. BOCCUZI JR., ESQ. (COUNSEL TO GOLDMAN SACHS CREDIT PARTNERS AND GS EUROPEAN PERFORMANCE FUND LIMITED) ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: JEFFREY A. ROSENTHAL (COUNSEL TO WACHOVIA BANK, WACHOVIA SECURITIES LTD AND EVERGREEN, ET AL.) ONE LIBERTY PLAZA NEW YORK NY 10006
CLEARY GOTTLIEB STEEN & HAMILTON LLP	ATTN: CARMINE D. BOCCUZZI AND THOMAS J. MOLONEY (COUNSEL TO GOLDMAN, SACHS & CO., ET AL. AND J. ARON & COMPANY) ONE LIBERTY PLAZA NEW YORK NY 10006
CLIFFORD CHANCE US LLP	ATTN: JENNIFER C. DE MARCO 31 WEST 52ND STREET NEW YORK NY 10019
CLIFFORD CHANCE US LLP	ATTN: ANDREW BROZMAN AND SARA M. TAPINEKIS (COUNSEL TO CALYON AND CALYON SECURITIES) 31 WEST 52ND STREET NEW YORK NY 10019-6131
CLIFFORD CHANCE US LLP	ATTN: ADNREW BROZMAN AND WENDY ROSENTHAL (COUNSEL TO BANIF-BANCO, DEXIA LUXEMBURG, DEXIA LOCAL, DEXIA DEUTSCHLAND AND DEXIA BELGIQUE) 31 WEST 52ND STREET NEW YORK NY 10019-6131
COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP	ATTN: PETER PEARLMAN AND JEFFREY HERRMANN (COUNSEL TO STATE OF NEW JERSEY, DEPARTMENT OF TREASURY, DIVISION OF INVESTMENT) PARK 80 PLAZA WEST-ONE SADDLE BROOK NJ 07663
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.	ATTN: LAURENCE MAY, ESQ. AND JOHN H. DRUCKER, ESQ. (COUNSEL TO FEDERAL HOME LOAN BANK OF PITTSBURGH) 900 THIRD AVENUE, 16TH FLOOR NEW YORK NY 10022
COMMODITY FUTURES TRADING COMMISSION	TERRY S ARBIT THREE LAFAYETTE CENTRE 1155 21ST ST, NW WASHINGTON DC 20581
COMMODITY FUTURES TRADING COMMISSION	ROBERT B WASSERMAN THREE LAFAYETTE CENTRE 1155 21ST ST, NW WASHINGTON DC 20581
CONTINENTAL AIRLINES, INC.	ATTN: JEFF WITTIG 1600 SMITH DEPT. HQ56G HOUSTON TX 77019
CONTRARIAN CAPITAL MANAGEMENT, LLC	ATTN: ETHAN SCHWARTZ 411 WEST PUTNAM AVENUE SUITE 425 GREENWICH CT 06830
COUNTY OF SAN MATEO	ATTN: MICHAEL P. MURPHY, COUNTY COUNSEL (COUNSEL TO COUNTY OF SAN MATEO AND COUNTY OF MONTEREY) 400 COUNTY CENTER REDWOOD CITY CA 94063-1662
COVINGTON & BURLING LLP	COUNSEL FOR WILMINGTON TRUST COMPANY ATTN M HOPKINS, D COFFINO, A RABOY THE NEW YORK TIMES BUILDING NEW YORK NY 10018
CRAVATH, SWAINE & MOORE LLP	ATTN: RICHARD LEVIN, ESQ & ROBERT H. TRUST, ESQ. WORLDWIDE PLAZA 825 EIGHTH AVENUE NEW YORK NY 10019

Claim Name	Address Information
WESTERN TERMINAL STORAGE INC	880 EAST COUNTRY CLUB ROAD GERING NE 69341
WESTERN UNION FINANCIAL SERVICES INC	660 N CENTRAL EXPY # 450 PLANO TX 75074
WESTERN UNION FINANCIAL SERVICES INC	PO BOX 10768 RENO NV 89510
WESTERN UNIVERSITY OF HEALTH SCIENCES	ATTN: TAMARA MCGRATH BUSINESS OFFICE 309 EAST SECOND STREET POMONA CA 91766-1854
WESTERN WAYNE OAKLAND COUNTY ASSOC OF	24125 DRAKE ROAD FARMINGTON MI 48335
WESTERN WISCONSIN REALTORS ASSOCIATION	325 E. ROSELAWN AVENUE ST. PAUL MN 55117
WESTERNBANK PUERTO RICO	STUART G. STEIN, ESQ. HOGAN & HARTSON L.L.P. 555 THIRTEENTH STREET, N.W. WASHINGTON DC 20004
WESTERNBANK PUERTO RICO	19 WEST MCKINLEY STREET MAYAGUEZ PR 00680
WESTERNBANK PUERTO RICO	ATTN: FREDDY MALDONADO C/O W HOLDING COMPANY, INC. P.O. BOX 1180 MAYAGUEZ PR 00681-1180
WESTERNBANK PUERTO RICO	ATTN: FREDDY MALDONADO / LIDIO SORIANO C/O W HOLDING COMPANY, INC. P.O. BOX 1180 MAYAGUEZ PR 00681-1180
WESTFAELISCHE LANDSCHAFT BODENKREDITBANK AG	SENTMARINGER WEG 1 MUNSTER 48151 GERMANY
WESTFAHL, CHRIS S	52 EAST RIDGE ROAD STAMFORD CT 06903-4337
WESTFAHL, CHRIS S.	52 EAST RIDGE ROAD STAMFORD CT 06903
WESTFALEN CREDIT SERVICES GMBH	POSTFACH 10 27 10 BOCHUM 44727 GERMANY
WESTFIELD FOUNDATION	P.O. BOX 2295 WESTFIELD NJ 07091
WESTFIELD INSURANCE PAYMENT PROCESSING	PO BOX 9001566 LOUISVILLE KY 40290-1566
WESTFIELD UNITED WAY	301 NORTH AVENUE WEST WESTFIELD NJ 07090
WESTGATE HOTEL	1055 SECOND AVENUE SAN DIEGO CA 92101
WESTGATE RESORTS FOUNDATION	5601 WINDHOVER DRIVE ORLANDO FL 59372-5617
WESTHEAD, ANDREW	220 RIVERSIDE BLVD 16B NEW YORK NY 10069
WESTHOFF CONE & HOLMSTEDT	1777 BOTELHO DRIVE, SUITE 370 WALNUT CREEK CA 94596
WESTHOVEN, MARGARET Y	8624 VANOY STREET ORLANDO FL 32810
WESTIN BOSTON WATERFRONT	425 SUMMER STREET BOSTON MA 02210
WESTIN CHICAGO RIVER NORTH HOTEL	320 NORTH DEARBORN STREET CHICAGO IL 60610
WESTIN FAIRFAX	2100 MASSACHUSETTS AVE NW WASHINGTON DC 20008
WESTIN GALLERIA DALLAS	13340 DALLAS PARKWAY DALLAS TX 75240
WESTIN NEW YORK AT TIMES SQUARE	270 WEST 43RD STREET NEW YORK NY 10036
WESTIN PALACE MILAN	PIAZZA DELLA REPUBBLICA MILAN 202-0124 ITALY
WESTIN PALO ALTO HOTEL	675 EL CAMINO REAL PALO ALTO CA 94301
WESTIN SEATTLE	1900 FIFTH AVENUE SEATTLE WA 98101
WESTIN STAMFORD HOTEL	ONE FIRST STAMFORD PLACE STAMFORD CT 06902
WESTIN TAMPA HARBOUR ISLAND	725 SOUTH HARBOUR ISLAND BLVD TAMPA FL 33602
WESTIN TOKYO	1-4-1 MITA MEGURO-KU 13 153-8580 JAPAN
WESTLB	GIROZENTRALE LONDON BRANCH WOOLGATE EXCHANGE 25 BASINGHALL STREET LONDON EC2V 5HA UK
WESTLB	GIROZENTRALE LONDON BRANCH WOOLGATE EXCHANGE 25 BASINGHALL STREET LONDON EC2V 5HA UNITED KINGDOM
WESTLB AG	WESTDEUTSCHE LANDESBANK GIROZENTRALE HERZOGSTRABE 15 D-40217 ATTN: INVESTMENT BANKING, SWAP DEPT DUSSELDORF GERMANY
WESTLB AG	ATTN: LEGAL DEPARTMENT WESTDEUTSCHE LANDESBANK GIROZENTRALE 1211 AVENUE OF THE AMERICAS 25TH FLOOR NEW YORK NY 10036
WESTLB AG	WESTDEUTSCHE LANDESBANK GIROZENTRALE NEW YORK BRANCH 1211 AVENUE OF THE AMERICAS ATTN: LEGAL DEPARTMENT NEW YORK NY 10036
WESTLB AG	1211 AVE OF THE AMERICAS NEW YORK NY 10036
WESTLB PANMURE	NEW BROAD STREET HOUSE 35 NEW BROAD STREET LONDON EC2M 1SQ UK
WESTLB PANMURE	NEW BROAD STREET HOUSE 35 NEW BROAD STREET LONDON EC2M 1SQ UNITED KINGDOM

EXHIBIT B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555 (JMP)

- -X

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- -X

United States Bankruptcy Court

One Bowling Green

New York, New York

February 22, 2012

10:02 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

MOTION Pursuant to Section 8.4 of the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors and Sections 105(a), 502(c) and 1142(b) of the Bankruptcy Code to Estimate the Amount of Claims filed by Indenture Trustee on Behalf of Issuers of Residential Mortgage-Backed Securities for Purposes of Establishing Reserves [ECF No. 24254]

MOTION of Lehman Brothers Holdings Inc. for Authority to Use Non-Cash Assets in Lieu of Available Cash as Reserves for Disputed Claims Pursuant to Section 8.4 of the Debtors' Confirmed Chapter 11 Plan [ECF No. 24726]

DEBTORS' Two Hundred Twenty-First Omnibus Objection to Claims (Duplicative of Indenture Trustee Claims) [ECF No. 20860]

MOTION of Jeremy R. Kramer for Reconsideration of the Reclassifications of His Compensation Claim as an Equity Interest [ECF No. 25307]

MOTION of Caisse Des Depots Et Consignations to Permit a Late-Filed Claim Against Lehman Brothers Special Financing Inc. [ECF No. 18039]

SYMPHONY ASSET MANAGEMENT LLC's Motions to Deem Proof of Claim Timely Filed {ECF Nos. 12074, 12075, 12076 and 12078] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Twenty-Eighth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 9983] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Thirty-Fourth Omnibus Objection to Claims (Misclassified Claims) [ECF No, 10286] (This matter has been adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' Thirty-Fifth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 11260] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Fortieth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 11305] (The hearing on the claims listed on Exhibit 1 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Forty-First Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 11306] (The hearing on the claims listed on Exhibit 2 is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Forty-Second Omnibus Objection to Claims (Late-Filed Lehman Programs Securities Claims) [ECF No. 11307] (The hearing on the claims listed on Exhibit 3 is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Forty-Third Omnibus Objection to Claims (Late-Filed Lehman Programs Securities Claims) [ECF No. 11308] (The hearing on the claims listed on Exhibit 4 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Sixty-Third Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 11978] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

MOTION of John Dmuchowski to Permit Filing of Claims as of September 23, 2009 [ECF No. 12006] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

CATHAY UNITED BANK'S Response in Opposition to Debtors' Fortieth Omnibus Objection to Claims (Late-Filed Claims) as to Claim No. 35181 and Motion to Have Claim No. 35181 Deemed Timely Filed [ECF No. 12037] (This matter is adjourned.)

MOTION of Pearl Assurance Limited to Deem Proofs of Claim to Be Timely Filed [ECF No. 12072] (This matter is adjourned.)

DEBTORS' Seventy-First Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 13230] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Fourth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 13955] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Sixth Omnibus Objection to Claims (No Liability Claims) [ECF No. 14440] (The hearing on the claims listed on Exhibit 5 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Seventh Omnibus Objection to Claims (No Liability Claims) [ECF No. 14442] (The hearing on the claims listed on Exhibit 6 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Eighth Omnibus Objection to Claims (No Liability Claims) [ECF No. 14450] (The hearing on the claims listed on Exhibit 7 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Eighty-Ninth Omnibus Objection to Claims (No Liability Claims) [ECF No. 14452] (The hearing on the claims listed on Exhibit 8 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Ninetieth Omnibus Objection to Claims (No Liability Claims) [ECF No. 14453] (The hearing on the claims listed on Exhibit 9 is adjourned to May 31, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Second Omnibus Objection to Claims (No Blocking Number LPS Claims) [ECF No. 14472] (The hearing on the Objection as to claims listed on Exhibit 10 is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Fifth Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 14490] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Ninety-Sixth Omnibus Objection to Claims (Duplicative LPS Claims) [ECF No. 14491] (This matter has been adjourned to March 22, 2012 at 10:00 a.m. as to the claim on Exhibit 11 attached hereto.)

DEBTORS' Ninety-Seventh Omnibus Objection to Claims (Insufficient Documentation) [ECF No. 14492] (The hearing on the objection to the claims identified on Exhibit 12 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Third Omnibus Objection to Claims (Valued Derivative Claims) [ECF No. 15003] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Tenth Omnibus Objection to Claims (Pension Claims) [ECF No. 15010] (The Debtors have withdrawn without prejudice their objections as to claim number 5343 Of Edward Lill and claim number 9581 of Richard Locke [ECF No. 25328}. The hearing on the objection to the claims identified on Exhibit 13 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eleventh Omnibus Objection to Claims (No Liability Claims) [ECF No. 14491] (This matter is not going forward. The hearing on the objection to the claims identified on Exhibit 14 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twelfth Omnibus Objection to Claims (Invalid Blocking Number LPS Claims) [ECF No. 15014] (This matter has been adjourned to March 22, 2012 at 10:00 a.m. as to the claims on Exhibit 15 attached hereto.)

DEBTORS' One Hundred Seventeenth Omnibus Objection to Claims (No Liability Non-Debtor Employee Claims) [ECF No. 15363] (This matter has been adjourned to March 22, 2012 at 10:00 a.m. as to the claims on Exhibit 16 attached hereto.)

DEBTORS' One Hundred Twentieth Omnibus Objection to Claims (No Blocking Number LPS Claims) [ECF No. 16074] (The hearing on the Objection as to the Unresolved Response is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-First Omnibus Objection to Claims (To Reclassify Proofs of Claim as an Equity Interest) [ECF No. 16075] (The hearing on the objection to the claims identified on Exhibit 17 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-Second Omnibus Objection to Claims (No Liability Claims) [ECF No. 16046] (The hearing on the claims listed on Exhibit 18 is adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-Fifth Omnibus Objection to Claims (Insufficient Documentation) [ECF No. 16079] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Twenty-Ninth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 16114] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Thirty-Second Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 16117] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Thirty-Sixth Omnibus Objection to Claims (Misclassified Claims) [ECF No. 16867] (The hearing on the objection to the claims identified on Exhibit 19 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Thirty-Eighth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 16865] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fortieth Omnibus Objection to Claims (Duplicative of Indenture Trustee Claims) [ECF No. 16853] (The hearing on the claims of Banque Safdie (Claim No. 33557) and Glitnir Banki hf (Claim No. 27419) is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Forty-Third Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 16856] (The hearing on the Objection to the claims listed on Exhibit 20 is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-First Omnibus Objection to Claims (No Liability Claims) [ECF No. 17478] (The hearing on the claims listed on Exhibit 21 is adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-Fifth Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 17468] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-Sixth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 17469] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Proofs of Claim Filed by 2138747 Ontario Ltd. and 6785778 Canada Inc. (Claim Nos. 33583 and 33586) [ECF No. 18397] (The hearing on the Objection has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-Eighth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 18399] (The hearing on the Objection as to the claims of Deborah Focht (Claim Nos. 34381, 42915, 42916) has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Fifty-Ninth Omnibus Objection to Claims (Invalid Blocking Number LPS Claims) [ECF No. 18407] (The hearing on the Objection as to the claim of Corner Banca SA (Claim No. 45218) has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Sixtieth Omnibus Objection to Claims (Settled Derivatives Claims) [ECF No. 18444] (The hearing on the Objection as to the claims of HBK Master Fund L.P. (Claim Nos. 19275 and 19276) has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Sixty-Second Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 18405] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Sixty-Third Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 18409] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Third Omnibus Objection to Claims (No Liability Employee Claims) [ECF No. 19399] (The hearing on the objection to claims identified on Exhibit 22 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Fourth Omnibus Objection to Claims (To Reclassify Proofs of Claim as Equity Interests) [ECF No. 19390] (The hearing on the objection to the claims identified on Exhibit 23 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Fifth Omnibus Objection to Claims (No Liability Pension Claims) [ECF No. 19391] (The hearing on the objection to the claims identified on Exhibit 24 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Seventh Omnibus Objection to Claims (No Liability Non-Debtor Employee Claims) [ECF No. 19393] (The hearing on the objection to the claims identified on Exhibit 25 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Eighth Omnibus Objection to Claims (Misclassified Claims) [ECF No. 19377] (The hearing on the objection to the claims identified on Exhibit 26 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Seventy-Ninth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 19378] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eighty-Second Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 19398] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eighty-Third Omnibus Objection to Claims (No Liability CMBS Claims) [ECF No. 19407] (This matter has been adjourned to June 28, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Eighty-Fifth Omnibus Objection to Claims (Compound Claims) [ECF No. 19714] (The Debtors have withdrawn without prejudice their objections as to claim number 94952 (Anthony Nahum) [ECF No. 25244]. The hearing on the objection to the claims identified on Exhibit 27 has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Eighty-Sixth Omnibus Objection to Claims (Misclassified Claims) [ECF No. 19816] (The hearing on the objection has been adjourned to June 28, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Eighty-Seventh Omnibus Objection to Claims (Misclassified Claims) [ECF No. 19817] (The hearing on the objection has been adjourned to June 28, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Eighty-Eighth Omnibus Objection to Claims (Duplicative LPS Claims) [Docket No. 19871] (This matter has been adjourned to March 22, 2012 at 10:00 a.m. as to the claims on Exhibit 28 attached hereto.)

DEBTORS' One Hundred and Eighty-Ninth Omnibus Objection to Claims (No Liability Repo Claims) [ECF No. 19870] (The hearing on the Unresolved Responses has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Ninetieth Omnibus Objection to Claims (No Liability Security Claims) [ECF No. 19873] (The hearing on the Unresolved Response has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Ninety-First Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 19888] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred Ninety-Second Omnibus Objection to Claims (Partially Settled Guarantee Claims) [ECF No. 19875] (The hearing on the Objection as to the claim of Red River HYPI, L.P. and JP Morgan Chase Bank, N.A. (Claim No. 22276) is adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Ninety-Eighth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 19902] (The hearing on the Objection as to the Unresolved Responses is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' One Hundred and Ninety-Ninth Omnibus Objection to Claims (No Liability Claims) [ECF No. 19903] (The hearing on the Unresolved Responses is adjourned to April 26, 2012 at 10:00 a.m.)

DEBTORS' Two Hundredth Omnibus Objection to Claims (No Liability Claims) [ECF No. 19921] (The hearing on the Unresolved Responses and the claim of Paul, Weiss, Rifkind, Wharton & Garrison, LLP (Claim No. 14176) is adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Proof of Claim No. 66099 Filed by Syncora Guarantee, Inc. [ECF No. 20087] (The hearing on the objection to the claim identified above has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Proof of Claim Number 29702 [ECF No. 20100] (The hearing has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Two Hundred Nineteenth Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 20787] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Objection to Claim Nos. 22886, 23011, 23024 (Duplicative of Indenture Trustee Claims) [ECF No. 20836] (This matter has been adjourned to March 22, 2012 at 10:00 a.m.)

DEBTORS' Two Hundred Twenty-Fourth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 20864] (This matter has been adjourned to March 22, 2012.)

DEBTORS' Two Hundred Twenty-Eighth Omnibus Objection to Claims (No Liability Derivatives Claims) [ECF No. 20886] (This matter has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Second Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 21727] (This matter has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Third Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 21727] (This matter has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-Seventh Omnibus Objection to Claims (No Liability Claims) [ECF No. 21727] (The hearing on the objection to the claims identified on Exhibit 29 has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Thirty-Eighth Omnibus Objection to Claims (Late-Filed Claims) [ECF No. 23242] (The hearing on the Objection as to the Unresolved Response is adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-First Omnibus Objection to Claims (No Liability Claims) [ECF No. 23247] (The hearing on the Objection as to the claims listed on Exhibit 30 has been adjourned to March 26 (sic), 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-Sixth Omnibus Objection to Claims (Valued Derivatives Claims) [ECF No. 23253] (This matter has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Two Hundred Forty-Fifth Omnibus Objection to Claims (No Liability Claims) [ECF No. 23251] (This matter has been adjourned to March 22, 2012 at 10 a.m.)

DEBTORS' Objection to the Claim of American Investors Life Insurance Co., Inc. (Claim No. 65963) [ECF No. 24110] (The hearing on the Objection has been adjourned to March 22, 2012 at 10 a.m.)

OMNIBUS Application of (I) Individual Members of Official Committee of Unsecured Creditors and (II) Indenture Trustees Pursuant to Section 1129(a)(4), or, Alternatively, Sections 503(b)(3) and 503(b)(4) of the Bankruptcy Code for Payment of Fees and Reimbursement of Expenses [ECF No. 24762] (The hearing on the Objection has been adjourned to March 22, 2102 at 10:00 a.m.)

LEHMAN BROTHERS HOLDINGS INC.'s and Creditors' Committee's Two Hundred Twenty-Ninth Omnibus Objection to JPMorgan's Asset Management Fund Claims (No Liability, Misclassified and Duplicative Claims) [ECF No, 21293] (This matter has been resolved.)

MOTION of Pictet & Cie and Bank Julius Baer & Co. Ltd. to Enlarge the Time Period for the Filing of Claim Number 64249 by One Day [ECF No. 21979} (This matter has been withdrawn.)

Transcribed by: Sara Davis

A P P E A R A N C E S :

WEIL GOTSHAL & MANGES LLP
Attorneys for Debtors and
Debtors-in-Possession
767 Fifth Avenue
New York, NY 10153

BY: GARRETT A. FAIL, ESQ.
MARK BERNSTEIN, ESQ.
LORI R. FIFE, ESQ.

WEIL GOTSHAL & MANGES LLP
Attorneys for Debtors and
Debtors-in-Possession
200 Crescent Court
Suite 300
Dallas, TX 75201

BY: ERIN D. ECKOLS, ESQ.
MATTHIAS KLEINSASSER, ESQ.

SILVERMAN ACAMPORA LLP
Attorneys for Caisse Des Depots
et Consignations
100 Jericho Quadrangle
Suite 300
Jericho, NY 11753

BY: JAY S. HELLMAN, ESQ.
BRETT S. SILVERMAN, ESQ.

THE MICHAELSON LAW FIRM
Attorneys for Morgan Lawrence (ph.),
Nicole Lawrence (ph.), Brian Monahan (ph.),
Donald Borghuna (ph.)
11 Broadway, Suite 615
New York, NY 10004

BY: ROBERT N. MICHAELSON, ESQ.

HINCKLEY ALLEN SNYDER LLP
Attorneys for Citibank &
Wilmington Trust
28 State Street
Boston, MA 02109

BY: JENNIFER V. DORAN, ESQ.

CHAPMAN & CUTLER LLP
Attorneys for U.S. Bank, N.A., as Trustee
111 West Monroe Street
Chicago, IL 60603

BY: FRANKLIN H. TOP III, ESQ.
JAMES HEISER, ESQ. (TELEPHONICALLY)

MILBANK TWEED HADLEY & MCCLOY LLP
Attorneys for the Official Committee
of Unsecured Creditors
One Chase Manhattan Plaza
New York, NY 10005

BY: EVAN R. FLECK, ESQ.

LOEB & LOEB LLP
Attorneys for Wells Fargo Bank
345 Park Avenue
New York, NY 10154

BY: WALTER H. CHURCHAK, ESQ.

NIXON PEABODY LLP
Attorneys for Deutsche Bank National
Trust Co. as Trustee
437 Madison Avenue
New York, NY 10022

BY: CHRISTOPHER M. DESIDERIO, ESQ.

KAPLAN & LANDAU LLP
Attorneys for Jeremy Kramer
1005 Avenue of the Americas
27th Floor
New York, NY 10018

BY: EUGENE N. KAPLAN, ESQ.

ALVAREZ & MARSAL NORTH AMERICA, LLC
Senior Vice-President and Co-Treasurer
of Lehman Brothers Holdings Inc.
600 Lexington Avenue
6th Floor
New York, NY 10022

BY: STEVEN J. COHN

GITLIN & COMPANY, LLC
Chairman of Fee Committee
1 State Street, #1750
Hartford, COURT 06103

BY: RICHARD A. GITLIN

STUTMAN TREISTER & GLATT
Attorneys for The Baupost Group
BY: MICHAEL NEUMEISTER, ESQ. (TELEPHONICALLY)
JEFFREY H. DAVIDSON, ESQ. (TELEPHONICALLY)

GENOVESE JOBLOVE & BATTISTA PA
Attorneys for Jamie H. Murcia
BY: ROBERT F. ELGIDELY, ESQ. (TELEPHONICALLY)

AKIN GUMP STRAUSS HAUER & FIELD LLP
Attorneys for Sunshine Enterprises, LP
BY: NATALIE E. LEVINE, ESQ. (TELEPHONICALLY)

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for Goldman Sachs Bank, USA
and Goldman Sachs International, LP
BY: BENJAMIN MEEKS, ESQ. (TELEPHONICALLY)

MONARD-D'HULST ADVOCATEN
Attorneys for Roger VanDebroek
BY: THOMAS VANDERSMISSEN, ESQ. (TELEPHONICALLY)

KING STREET CAPITAL MANAGEMENT LLC
BY: MITCHELL C. SOCKETT, ESQ. (TELEPHONICALLY)

GSO CAPITAL PARTNERS
BY: ANTHONY BORRECA (TELEPHONICALLY)

FARALLON CAPITAL MANAGEMENT
BY: ANATOLY BUSHLER (TELEPHONICALLY)

WATERSTONE CAPITAL MANAGEMENT LLP
BY: DAVID DUBACK (TELEPHONICALLY)

CANYON PARTNERS
BY: RAJ IYER (TELEPHONICALLY)

ANGELO GORDON & CO. LP
BY: DANIELLE LEONE (TELEPHONICALLY)

UBS SECURITIES LLC
BY: DENNIS J. RUGGERE (TELEPHONICALLY)

CITIGROUP
For CitiGroup Global Markets
BY: BILL J. SCHWARTZ (TELEPHONICALLY)

GRANTHAM MAYO VAN OTTERLOO & CO.
BY: WEI WANG (TELEPHONICALLY)

VARDE PARTNERS, CREDITOR
BY: SCOTT HARTMAN (TELEPHONICALLY)

TIMOTHY B. WILKINSON
Claimant Pro Se (TELEPHONICALLY)

MICHAEL BURROW
Claimant Pro Se (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark Bernstein from Weil, Gotshal, Manges on behalf of Lehman Brothers Holdings Inc. and its affiliated Chapter 11 debtors.

We have two reserved motion on the agenda this morning and then three contested claims matters. The first reserved motion is the motion of the debtors to estimate the amount of claims filed by indenture trustees related to residential mortgage-backed securities. As Mr. Perez reported at the prior hearing, the debtors and the indenture trustees have met and have discussed and have agreed on a reserve for these particular claims of five billion dollars, in the aggregate, for the claims of U.S. Bank, Wilmington Trust, Deutsche Bank and Wells Fargo.

Separately, the debtors have agreed on reserves for Bank of America and HSBC. And those are not included in this order; the five billion just really for those first four trustees.

Yesterday, he debtors filed a revised form of order which indicates the five-billion dollar reserve number and allocates it ninety-five percent for the claims against LBHI and five percent for the claims against SASCo. In addition, the debtors have agreed with the indenture trustees to seek to mediate the amounts -- the allowed amounts of the claims to

finally resolve the matter altogether. And that -- there's a paragraph in the order directing the parties to mediate at -- with a mediator, either selected by the parties if they can agree or selected by the Court.

I'm happy to answer any questions Your Honor might have on this. Otherwise, this is going forward on an uncontested basis and we respectfully request Your Honor grant the motion estimating the reserve at five billion.

THE COURT: The motion's granted.

MR. BERNSTEIN: Thank you, Your Honor.

The next item on the agenda will be handled by my colleague, Mr. Fail.

MR. FAIL: Good morning, Your Honor. Garrett Fail; Weil, Gotshal for the debtors.

The next motion is the motion of Lehman Brothers Holdings Inc. for authority to use non-cash assets in lieu of available cash as reserved for disputed claims. Of the approximately 11,900 holders of disputed claims that were served with the motion, only five filed responses. I'm happy to report, Your Honor, that four of the five objections have been resolved. The debtors have been informed that Mr. Coreth, Golden State Tobacco Securitization Corporation, Commerce Bank and U.S. Bank are no longer prosecuting their objections.

The debtors were not able to reach a resolution of the fifth objection which was filed by Mr. Jamie Murcia who holds a

1.4 million dollar disputed claim. LBHI has agreed to adjourn the hearing with respect to Murcia's -- Mr. Murcia's claim only to the March omnibus hearing. The debtors are hopeful that they will be able to reach a resolution of this objection prior to that date to obviate the need for a contested hearing. As a result, the motion is going forward uncontested this morning.

The approach of this motion was expressly contemplated by Section 8.4 of the Chapter 11 plan confirmed in December.

THE COURT: Let me break in and ask you a question that may be obvious to everybody, but it's not obvious to me. How does it work for Mr. Murcia's opposition to be reserved to another hearing when I'm being asked to approve a procedure that applies across the board? Is it the position that this is specific to Mr. Murcia and that, at least in respect of his claim as a disputed claim, that his claim, pending resolution, will still be treated as reserved by cash assets?

MR. FAIL: The debtors will reserve 100 percent of the pro rata share of distributions in cash for Mr. Murcia's 1.4 mill -- approximate 1.4 million-dollar claim, pending another agreement on a reserve, disallowance of the claim or order of the Court with respect to an ability to substitute non-cash assets for that claim.

THE COURT: So the curiosity, it seems, is that because he has a relatively small claim, he ends up, by virtue of not resolving his objection, with cash reserves while

everybody else in the case gets non-cash reserves. That seems bi -- that seems strange to me.

MR. FAIL: A higher percentage of cash reserves. There will be a twenty-five percent -- a minimum of twenty-five percent reserved on an aggregate basis for all of the claimants and that aggregate is pooled. And it's higher at different subsidiary debtors that -- as set forth in the Cohn declaration, Your Honor. So that money is pooled.

So to the extent that other claims that are currently disputed become subsequently allowed after the first distribution date and before the second, cash will be available for those claimants as it would for Mr. Murcia. In the interim, though, to avoid a contested fight over what is in this case a relatively small claim, in the unique circumstances of these cases, we thought it best to proceed on a consensual basis.

THE COURT: Okay. I mean, I was perfectly prepared to deal with everything on a contested basis today. So we can deal with it in a month.

MR. FAIL: Okay. Thank you, Your Honor.

The debtors believe that using a partial non-cash reserve for disputed claims is a preferred means to accelerate distributions to the thousands of holders of allowed claims. If the motion is approved, the six participating debtors estimate that they will be able to distribute approximately 2.8

billion dollars more than they would otherwise to holders of allowed claims in the initial distribution alone.

As described in the motion, the relief requested also benefits holders of currently disputed claims that subsequently become allowed because they will benefit -- because they will be entitled to receive a catch-up distribution at the higher percentage paid on the initial distribution. The procedures established provide adequate, reasonable protection for the holders of disputed claims. In order to substitute non-cash assets, two conditions must be satisfied on a distribution date: The applicable debtor must reserve at least twenty-five percent of the required reserve amount in cash so there will be a minimum cash reserve; and the value of the participating debtor's non-cash assets must be at least 2.5 times that amount of the debtor's required reserve not covered by the minimum cash reserve.

Non-cash assets will be used first to pay catch-up distributions to holders of disputed claims that become allowed. And then, to replenish the fund -- replenish and fund the minimum cash reserve before further distributions are made to holders of previously allowed claims. The motion does not apply to administrative, priority or secured claims. All disputed claim holders will be entitled to receive the interest earned on their reserve amount as if the entire amount has been reserved in cash. So there is no change with respect to the

interest provision in the plan.

Additionally, the plan administrator will evaluate the -- each debtor's assets and claims prior to each distribution date and the plan administrator may establish additional minimum conditions prior to substituting non-cash assets as reserves. The relief requested is supported by the Cohn declaration. Mr. Cohn is a managing director with Alvarez & Marsal and a senior vice-president and co-treasurer of Lehman Brothers Holdings Inc.

The declaration illustrates the mechanics of the motion, assuming values as of January 27th, 2012, and it provides further support for the protections that are established by the motions for disputed claim holders. For instance, in the illustrative example set forth on Exhibit D, the asset-to-reserve ratio for LBHI is in excess of 20:1. And for LCPI, it's 190:1.

The other participating debtors will retain a minimum asset-to-reserve ratio of 2.5:1 but a minimum cash reserve significantly greater than twenty-five percent; fifty percent for LBSF, seventy percent for LOTC and ninety percent for LBCS. Mr. Cohen is present in the courtroom today and I would move for the admission of his declaration into evidence.

THE COURT: Is there any objection to that?

I hear no objection. It's admitted.

(Steven Cohn's declaration was hereby received into evidence as

a Debtors' Exhibit, as of this date.)

MR. FAIL: Thank you, Your Honor.

The motion is also supported by the creditors' committee which filed a statement in support at Docket 25546. On February 20th, we filed a revised proposed order. The order contained clean-up and technical changes, mainly relating to amounts other than plan adjustment that are reallocated pursuant to settlements incorporated into the plan. The changes make clear that any reallocated amounts for the LCPI settlement amount, the LBSF settlement amount and the LBSF additional settlement amount that would be reserved for disputed claims in the classes that are allowed to receive a share of those plan settlement reallocations will continue to be reserved in cash.

In addition, to resolve one of the objections to the motion, LBHI agreed that it would provide notice of its intention to substitute non-cash assets in compliance with the requirements of the motion and the proposed order in advance of any distribution made, subsequent to the initial distribution. Under the unique circumstances of these cases, the debtors respectfully request that the Court grant the relief requested.

THE COURT: We're proceeding on an unopposed basis, so this becomes easy to do. But I would like to hear from counsel for the creditors' committee in reference to the statement that was filed, which is have read, because we're dealing with a

fairly significant adjustment in the treatment of disputed claims, fully consistent with Section 8.4 of the plan, but with specifics that were not built into the plan. And so, I'm particularly interested in hearing what the creditors' committee has to say about its independent review of this process.

MR. FAIL: Thank you, Your Honor.

MR. FLECK: Good morning, Your Honor. Evan Fleck of Milbank, Tweed -- shouldn't have done that -- on behalf of the official committee.

As Mr. Fail noted, and as Your Honor noted, we do support -- the committee supports the relief requested in the motion and we filed a statement on the docket. When the plan provision was initially contemplated, the committee was supportive of it. At that time, it was really just a concept that maybe at some time in the future, it will make sense to use some of the non-cash assets of the estates and they're significant, to provide for protection and reserve when distributions ultimately -- when we reach that phase of the case. And it wasn't until after the plan discussions really took place in earnest and the confirmation process that we thought, together with the debtors, about potentially invoking that provision and coming up with the mechanism that's the subject of the motion.

And as with many other motions, we've come up before

the Court and told Your Honor that we took a lot of time and we weren't initially, as a committee, convinced that this was the right way to proceed. And together with the committee's financial advisors, we spent a great deal of time working with A&M to crunch the numbers and make sure that not only were the and are the allowed claimants protected by the relief requested in the motion, but also those parties who had disputed claims because the committee recognizes that those parties, some of them will ultimately have allowed claims; they are part of the creditors' committee's constituency and the committee owes fiduciary duties to those parties as well.

And after taking those analyses into account, ultimately the committee did decide this relief does make sense and protects the interests of all parties. And, as Your Honor noted, it was contemplated by the plan and ultimately with the -- in connection with the motion, parties were given adequate notice of the relief that was requested.

The committee, often, through counsel and financial advisors, we received inquiries from parties in interest in the cases and often their views about relief requested. In the case of this motion, there were questions raised by creditors but the overwhelming majority of the inquiries that the committee received and that its advisors received was positive. People wanted do know the mechanism by which the catch-up distributions and subsequent distributions would be made and

how'd they be protected, but after they understood the process, there was overwhelming support.

The committee -- there are two primary reasons why the committee is supportive of the relief, Your Honor. First, it's because of the substantial benefits that go to allowed -- holders of allowed claims. I think that's manifest from the motion; distributions are going to be larger. And as I argued to the Court in connection with the LBF motion a few weeks ago, it's important to the committee that part of the bargain that we think was at issue in this plan settlements that so many creditors in these cases made and the compromises they reached in connection with resolving their claims and not pursuing litigation in these case was that the initial distribution, and all distributions, would be meaningful. And they would be the largest distributions that were appropriate under the plan. And those creditors were aware that this provision was in the plan, believed it was appropriate and in the committee's view, it was their rational expectation that some of the non-cash assets of these estates would be used for reserve purposes so that the initial distribution could be as large as possible and as appropriate under the circumstances, while still taking into account and protecting the interests of the disputed claim holders.

In consultation with counsel and its financial advisors, the committee concluded that the risk to the holders

of disputed claims in this process is remote. So many things in this case, we've said there's no such thing as a riskless transaction; we think that's true here as well. But the risks that exist here are reasonable and appropriate under the circumstances. It's set forth more fully in the declaration of Steven Cohn in support of the motion, but the committee believes that LBHI has proposed reasonable measures to protect the interest of the disputed claim holders. In the committee's opinion, it will ensure that any potential prejudice to those holders, as I said, is remote.

Although LBHI can come back to the Court and propose additional minimum conditions, with respect to the minimum asset-to-reserve ratio, there will -- they would be required to provide due notice to the holders of disputed claims and this Court's approval would be required if LBHI ever seeks to reduce the minimum terms and conditions that are proposed in the motion. That was a very important component of the process for the committee.

Additionally, Your Honor, under the priority scheme for subsequent distributions, the available cash that's generated from non-cash assets will be used first to satisfy the catch-up distributions and then to fund the minimum cash reserve for the outstanding disputed claims. And in the committee's view, they're comfortable that that will endure that the holders of disputed claims that subsequently become

allowed claims will receive the pro rata share of distributions to which they're entitled. Significantly, the holders of disputed claims will be -- will continue to be entitled to the accrual of interest that would have been earned on the entire amount of the reserves as if they consisted entirely in cash.

And more important to the committee's determination that the request is reasonable under the circumstances, the committee's advisors have analyzed all the variables that will impact the sufficiency of available cash to cover the disputed claim that subsequently become allowed and to fund the minimum cash reserve, and have concluded that there is no risk of insufficient available cash to satisfy catch-up distributions. As we've set forth in the committee's statement, the committee's advisors together with the debtors' advisors have analyzed the outstanding disputed claims; the debtors' projections of the amounts in which such claims may be allowed as well as the committee's own projections; the value of the participating debtors' non-cash assets; the estimated cost of the post-effective date administration of the participating debtors' estate; and the near-term cash events that are expected to generate non-cash assets. And based upon those analyses, the committee has concluded that a significant cushion will exist for the protection of holders of disputed claims, thereby making the risks that are attendant to the motion remote and appropriate under the circumstances.

And for those reasons, Your Honor, the committee is supportive of the relief requested and asks that the order be entered.

THE COURT: I appreciate your comments and they're very helpful. But I, without quibbling, want to ask you about your reference to there being no risk to the inability of the debtor to make catch-up distributions versus what I think was your opening salvo that it's virtually impossible for transactions to made riskless.

Is this a remote risk or is there, in the opinion of the committee's professionals, no risk that this set-up will result in a shortfall for any of the disputed creditors in the future?

MR. FLECK: Your Honor, we believe that there's a very remote risk. I guess that's option number 3, because, as I said, we think that -- we're very comfortable with the committee's analyses with respect to the value of the non-cash assets. We've tested the debtors' determination and analyses with respect to the valuation of those assets. We think they're good and they can be relied upon, and they've been relied upon throughout these cases.

We can't predict every circumstance that comes up along the way, so therefore --

THE COURT: Your partner seems anxious to say a few words. And I'm going to let him do that.

MR. FLECK: Okay.

UNIDENTIFIED SPEAKER: Your Honor, I picked up on how you precisely phrased this in terms of whether there's a remote risk or no risk with respect to a potential shortfall or the inability to make distributions to creditors in the future. And I'm going to answer it two ways.

We believe there is no risk that a creditor will bear a permanent risk of non-payment as a result of this. There is a remote risk that -- and we believe it's a very small risk -- that a subsequent distribution date -- there may be insufficient cash assets to true up everybody whose claims have been allowed in the interim, and therefore they would have to wait to the next one when those non-cash assets were liquidated. But we believe that is extremely remote. We ran numerous hypotheticals on that and in the, you know, ninety-five-plus percent of cases, there wasn't even the delay of payment.

THE COURT: Okay. Appreciate that.

UNIDENTIFIED SPEAKER: Thanks.

THE COURT: I also recognize that my question was deliberately designed to get at what risks we're talking about. And I'm satisfied that the difficult question has been answered -- by both of you.

I do have a question, though, for Mr. Fail, and perhaps also for Mr. Cohn. And it has to do with the

resolution of all objections with the exception of Mr. -- or maybe it's Ms. Murcia's objection which continues. I'd like to know more about the process that led these various objectors to, in effect, give up and whether or not any concessions were made to them in order to get them to withdraw their objections at this point.

MR. FAIL: Your Honor, Garrett Fail, again.

With respect to U.S. Bank and to the extent that any of the parties are present or on the telephone and wish to add, supplement or correct, you know, they should feel free -- with respect to U.S. Bank, our conversations were productive immediately following the filing of the Cohn declaration which was filed after the objection deadline. So, after parties, I think, after all of the parties had a chance to review the Cohn declaration and we had a chance to explain it and discuss it with them and the committee's statement in support was filed, circulated to them and discussed, I think that's one area that went a very long -- two things that went a long way to resolve the objections.

With respect to U.S. Bank, Your Honor, I don't know if I names them originally, but that was -- to resolve that objection, we agreed to -- the debtors agreed to provide advance notice of subsequent applications of the relief required in the motion. That is the only thing. In connection with none of these resolutions were any claim settlements

reached; no claims allowed; no compromise on the debtors' or any parties in interest's ability to object to these claims which are -- may be disputed.

With respect to the remaining three claims, if my math is correct, the debtors entered into reserve stipulations which provided for a minimum cash reserve percentage higher than twenty-five percent, but a floor that would be maintained for each of the claims. Which, again, in the context of these cases, were each relatively small and in the aggregate, compared to the amount of and the number of and the size of the aggregate pool of disputed claims and the cash that would be required to be reserved, are relatively minimal; it wouldn't have an effect on the -- significant effect on the distribution to creditors.

THE COURT: Okay. Is there anyone else who wishes to say anything in reference to this inquiry?

MR. TOP: Your Honor, Frank Top on behalf of U.S. Bank. We did withdraw our objection based upon the statements that the debtors are going to be providing, particularly as part of future distributions. We were not as concerned about this upcoming distribution, particularly since we're primarily an LBHI creditor and the ratios currently are so large. But we are, of course, you know, concerned about future distributions and we felt that the -- at least the statement that, you know, the debtors -- that someone's actually looking at these ratios

and that these ratios are being complied with in connection with future distributions will be helpful, not only to U.S. Bank, but to all creditors of the estates, so that they can take a look at that and review that in advance of a distribution and take whatever action they view as appropriate at that particular point in time.

We also took some comfort with the fact that the plan administrator doesn't have to use these particular ratios; it could be more conservative if the plan administrator so chooses. And so we would hope that, you know, to the extent that market conditions got to the point where, lo and behold, there might be another Lehman event or something like that that's so drastic that the plan administrator would use his discretion appropriately, that -- be a little bit more conservative if that -- those types of events ever occurred.

So, no, we don't think that there's no risk, but we think so long as people are provided with information in advance of future distributions to allow them to protect themselves, to a certain extent, and that the plan administrator uses his discretion appropriately, that we got comfortable enough with the motion to withdraw our objection.

Thanks.

THE COURT: Okay. I have a question for Mr. Cohn, if he's present. It's a very, very -- Mr. Cohn, you can hear the question and then you can stand up and answer. There's no need

to be sworn at this point.

It's really -- I guess it's my own inability to fully appreciate the financial models that are embedded in the conclusions set forth in your declaration and in the proposal. I'd like to know a little bit more about how the ratio of 2.5:1 was developed.

I assume that there was a sensitivity analysis of some sort done and that different ratios may have been tested as part of the process in coming up with the 2.5. But, obviously, the 2.5 bears no relationship to the 190:1 ratio that appears at LBHI. And in part because this structure is so complicated, at least from my perspective, and must have evolved over time with a balancing between maximizing present distributions to allowed claimants and protecting the interests of future claimants that are subject to dispute, I'm just interested in knowing how this process went and how you ended up in the place that has been proposed.

MR. COHN: Sure. We actually --

THE COURT: You can come to the microphone.

MR. COHN: My name is Steven Cohn.

We actually looked at a couple of different options. We looked at roughly 2-and-a-half to 1 and 3:1 and the concept that we used in determining that or looking at this was almost an asset-based lending concept. In other words, if we -- if the estate were to go out and borrow money based on the assets,

what kind of advance rate would a bank provide to us in terms of the asset? Similar to an asset-based loan that uses accounts receivable or inventory as security, you might get eighty percent of the accounts receivable or you might get sixty percent of inventory. These being a combination of assets that are liquid that actually throw off cash, as in loans, whether they be real estate loans or commercial loans, and assets that don't throw off money such as private equity investments or, you know, other things that we need to wait for to monetize. So, a combination of things and we thought we needed to be a little bit more conservative than what a bank would actually do on liquid inventory and receivables because that's an on-going business. So we wanted something somewhat more conservative than that.

We looked and two and a half; we looked at three. We thought that two and a half was a reasonable floor in terms of protection. As you've noticed from the exhibit, it only applies to the three smaller entities at this point in time. And we would expect that, over time as their assets decline, their actual reserves of cash will increase. I think at the moment, it's about fifty percent for LBSF. We would think, actually, by the time of the distribution, it'll actually be a higher percentage cash reserve because their assets continue to come down as cash is collected. So the two-and-a-half-times number which will be the trigger will actually generate a much

higher -- not much, but maybe ten-point higher cash reserve at this point, but the time we get to a distribution.

So that was really the thought process. We thought twenty-five percent on the other side, as a cash reserve, was really kind of the absolute minimum. In other words, we are conscious of our obligations to disputed claimants as well as allowed claimants and that, really, using something less than twenty-five percent was not prudent. And we reserved the rights, at least as my understanding goes, that if as the assets decline in the estate or we're not happy with the quality of the assets, to say you know what, our minimum threshold will be thirty-five percent on the second or third or fourth distribution in order to make sure that there is sufficient assets available to pay the disputed claimants as they become allowed.

THE COURT: And I take it that in this process, you had some interaction with the professionals for the committee and shared your work product or at least thinking with them and that they tested it as well?

MR. COHN: Yes. We spent a considerable amount of time with FTI who are the financial advisors on this piece of the business with -- of the committee. They took us through their analysis; they asked us to do a little bit more. We had done some work -- the only thing that's not included were our estimates of cash flow on a go-forward basis, which is really

what the committee's advisors wanted to understand. In other words, how much cash would be generated between now and the next distribution date and they made their own estimates and we shared with them whether we thought they were in the ballpark or not. They were using conservative numbers and they were -- and they actually shared with us a preliminary form of the exhibits that they shared with the committee. So, yes, we had the opportunity both to work with them and to give them some constructive criticism as to how their presentation should go.

THE COURT: Okay. Thank you very much for that.

Anything more?

MR. FAIL: No, Your Honor.

THE COURT: Okay. This is approved. I'm satisfied based upon the materials that I've reviewed and the statements that have been made on the record, including the comments of counsel, both counsel for the committee who happen to be present today and Mr. Cohn's statements in response to my questions, that the structure that's been set up here provides what I'll term adequate protection for the disputed claims. And I believe that the process that has been described represents a creative and appropriate balancing of the needs of creditors whose claims have been allowed with those creditors that have claims that are subject to dispute.

Candidly, I'm surprised that there is a remaining objection that is being carried and, to the extent that this is

being heard as a separate matter in March, I'm frankly loathe to disparately protect one creditor that happens to be unwilling to make concessions in the objections that had been lodged. Notwithstanding the very persuasive evidence that has been presented concerning adequate protection, such opposition should not result in more favorable treatment.

I'm in effect telegraphing what I would do with that objection if it were being heard today. To the extent the parties wish to be guided by that, that may be helpful.

It's approved and I'll enter the order.

MR. FAIL: Thank you very much, Your Honor. I'll turn the podium over to my colleagues who will continue with the rest of the claims agenda.

THE COURT: Okay.

MR. KLEINSASSER: Your Honor, Matthias Kleinsasser with Weil, Gotshal for the debtors. I'm going to handling agenda item 3.

Your Honor, this item concerns the 221st omnibus objection. That objection seeks to expunge claims of individual noteholders, each of which is covered by a proof of claim filed by an indenture trustee.

Today, Your Honor, we're moving against claim 67675, which is held by Ms. Annetta Pugia. That claim which, Your Honor, I'm going to call the new claim, is virtually identical to claim 35260 which Ms. Pugia filed on September 28th, 2009.

Your Honor, I'm going to refer to the claim 35260 as the original claim.

The debtors previously identified the original claim as duplicative of the indenture trustee claim 21805 filed by Bank of New York Mellon and included the original claim on the twenty-seventh omnibus objection. The Court overruled Ms. Pugia's objection to the twenty-seventh omnibus objection and the original claim was expunged pursuant to an order of this Court entered on September 21st, 2010.

Ms. Pugia subsequently filed the new claim, Your Honor, on October 3rd, 2011. The new claim is subject to the 221st omnibus objection and the new claim is the one we're moving against now. The new claim is essentially the same claim as the original claim, Your Honor, and actually purports to amend the original claim. The asserted amount is almost exactly the same, approximately 23,000 dollars, and it's based on the same security as the original claim.

The debtors have identified the new claim as duplicative of indenture trustee claim, 21805, the same indenture trustee claim that covered the original claim. Specifically, Your Honor, the security on which the new claim is based has a QCIP of 52519Y209, which is covered by the indenture trustee claim.

Ms. Pugia filed two responses to the 221st omnibus objection; one on October 24th, 2011 at docket number 21560,

and an identical response on February 8th, 2012 at docket number 25111. These responses do not address the merits of the 221st omnibus objection. The bases of these responses is that Ms. Pugia invested money with the debtors who shortly thereafter were found to be financially unsound.

The responses request that the Court overrule the objection because the investment made by Ms. Pugia represent a lot of money to her. Without meaning any disrespect to Ms. Pugia, Your Honor, who I understand to be appearing pro se in this case, the debtors would point out that she has not addressed the merits of the 221st omnibus objection; specifically, that the new claim is duplicative of the indenture trustee claim.

Because the security serving as to the basis for the new claim is covered by the indenture trustee claim, we respectfully request that the Court overrule Ms. Pugia's responses and grant the 221st omnibus objection with respect to claim 67675.

THE COURT: Is Annetta Pugia in court or is she present by telephone?

I hear no response. I've reviewed the claimant's written submission and agree with the characterization of counsel that it does not deal with the merits of the objection under the circumstances. And given the fact that Ms. Pugia is not here to prosecute her response, I'm overruling her

objection and granting the omnibus objection to claim with respect to her claim.

MR. KLEINSASSER: Thank you, Your Honor. I'm now going to turn the podium over to my colleague, Ms. Eckols.

Thank you.

MR. FAIL: Your Honor, Garrett Fail again. Just one scheduling note. I think there's -- I know there's an item on the calendar today for a status conference in connection with a motion filed by the members of the creditors' committee for reimbursement. Mr. Gitlin is here, chair of the fee committee, and has a scheduling conflict.

So if, at a certain point it pleases the Court, we could adjourn briefly the claims hearing and have the status conference. Alternatively, if that doesn't work for the Court we'll just proceed with the claims agenda.

THE COURT: Well, I see Mr. Gitlin in the front row. Ordinarily I don't change the order of business to accommodate the needs of one individual, unless there's an extraordinary need for that individual to be present. And in Mr. Gitlin's case, that's true; he does need to be present for the conference. If I had been advised of this prior to the commencement of today's hearing, we might have taken the status conference first and avoided the interruption of the calendar.

When -- not that his personal business should become public knowledge, but when does Mr. Gitlin need to leave the

courtroom?

MR. GITLIN: Your Honor, if necessary, I could stay. Unfortunately, I have made serious commitments today in another town. If I could leave the courtroom about a quarter to 12 or 12, I could still make it.

THE COURT: Oh, that won't be a problem.

MR. FAIL: Thank you, Your Honor.

MS. ECKOLS: Good morning, Your Honor. Erin Eckols for the debtors. I'm going to be handling the last two contested claims items. Agenda item 4 is the motion of Jeremy Kramer for reconsideration of the reclassification as an equity interest.

I believe Mr. Kramer's counsel is in the courtroom and making his way up to the podium.

THE COURT: Okay.

MR. KAPLAN: Good morning, Your Honor. Eugene Kaplan for Jeremy Kramer.

This is a motion for reconsideration of Mr. Kramer's claim which was reclassified as an equity interest in default. Mr. Kramer --

THE COURT: He voluntarily defaulted. He knowingly didn't take a position. How can you possibly come back now?

MR. KAPLAN: Well, I think, first of all the fact that -- even if he voluntarily defaulted, that's not a basis to --

THE COURT: Yes, it is.

MR. KAPLAN: It's one basis.

THE COURT: He's a sophisticated claimant who, according to the papers, knew full well that he had an opportunity to object. Extended the time with the consent of the debtor and chose to take a dive.

MR. KAPLAN: He is a sophisticated investment professional. He's not a lawyer. He's not a bankruptcy lawyer.

THE COURT: He certainly is in a position to protect his interest. It's a large claim. He worked at Neuberger Berman. He, presumably, knows a lot about what goes on in bankruptcies or is in the position to learn about it.

He was in consultation directly with debtors' counsel and made an informed decision, at least informed well enough for his purposes to not take a position. He could have hired counsel, he chose not to.

MR. KAPLAN: He could have.

THE COURT: He's now hiring counsel too late.

MR. KAPLAN: He hired counsel after he had spoken with his --

THE COURT: He's hiring counsel after he observed that others similarly situated were able to improve their position by fighting.

MR. KAPLAN: But those others were members of the same

group with which he is affiliated at Neuberger Berman, with whom he consulted initially and who expressed no interest in joining with him.

THE COURT: So what?

MR. KAPLAN: And --

THE COURT: So what?

MR. KAPLAN: He did not --

THE COURT: He's an individual. He's in the position to take a fight if he chooses to.

MR. KAPLAN: He did not know enough --

THE COURT: He chose not to.

MR. KAPLAN: He did not know enough to --

THE COURT: He could have learned. He could have informed himself, he didn't.

MR. KAPLAN: He could have, that's true. But even if -- even that being so does not mean that his default cannot be vacated and put him back into the position of litigating his claim.

THE COURT: Well, he has a 60(b) obligation to bear, how does he do that?

MR. KAPLAN: Well, he has demonstrated that the claim has merit. He has demonstrated, I think quite clearly, that the debtors are not at all prejudiced by restoring his claim. And I think he has demonstrated, certainly, that he did not act in bad faith. That under 60(b) his -- it certainly wasn't a

conscious decision to default, it was a --

THE COURT: Oh, yes, it was.

MR. KAPLAN: I think it was a lackadaisical sort of choice.

THE COURT: But, wait. But, wait. We're not talking about somebody who was unconscious. We're talking about someone who made a knowing decision not to take issue with the omnibus objection that affected his right. He did that knowingly. He may not have done it with the advice of counsel, and, presumably, he didn't retain counsel because he didn't think it was worth spending the money to engage counsel to fight the fight.

MR. KAPLAN: No, I don't -- I think he sought out others in the Straus Group to work with him and they, because they had not been named in this objection, for whatever reason the debtor chose not to name them and isolate Mr. Kramer, they decided that there was nothing that they had to deal with at that time. When they then were served with the next or the 118th objection, they went out and got counsel and -- over the course of months they got counsel and proceeded to fight the objection. He did not have that opportunity.

As you will see, Judith Kenney who was not a member of the Strauss Group but who was at Neuberger, she filed pro se papers and then later joined the group that I represent with respect to the 118th objection and joined in. But putting Mr.

Kramer in with his fellows does no more than put him where Ms. Kenny is and the others are, which is giving them a chance to fight for their claims.

As I said, the tripartite test by the Second Circuit, under 60(b) is not a win or take all of each element. It's looking at the totality of the circumstances and here, given that there is some merit to the claim that is going forward, given that the debtor is put in no worse a position with respect to Mr. Kramer's claim then with respect to other claims of the same nature, the only question is the excusability (sic) of the default.

And while Mr. Kramer may not have been litigious at the time and may not have thought much of the claim enough to go out and retain counsel at that time. He has thought about it subsequently. He has retained counsel. He's put in a position with everybody else. It certainly wasn't this, sort of, conscious, deliberate, willful, nasty, sort of, default that Lehman attempts to characterize it as. He was a pro se who didn't really understand what he was doing and gave up his rights and now thinks better of it. And given where we are in this process, nobody's really hurt by allowing him to come back and argue his claim.

THE COURT: On the prejudice point, let me press you a little bit because the history of the claims objection docket in this case is one of people just like your client, Mr.

Kramer, who default -- knowingly default -- receive notice of an omnibus claims objection and who say nothing and do nothing, and these matters go forward on an uncontested basis and billions of dollars in claims have been disallowed as a result of that process.

If what you say becomes the law of the case, every single person who made the same kind of decision that Mr. Kramer made can come back into court and restart the process. That's prejudice, not only to the debtors but to me.

MR. KAPLAN: I think that Mr. Kramer presents a special case.

THE COURT: Why?

MR. KAPLAN: Because --

THE COURT: I think he actually presents a case that's less special. He is a pro se who is sophisticated. He's a pro se that sophisticated people go to for financial advice. He's the kind of person who has access to smart advisors. He could have obtained you earlier and made an economic decision. According to your statements and your pleadings, if he had a group, he would have hired counsel but he didn't want to do it on his own. That's his choice.

MR. KAPLAN: Going back to what Your Honor started with, which is the prejudice, I think that the instance of these Neuberger claimants that I represent present, as I said, a special case, because they are far different from the

ordinary Lehman employees who voluntarily joined the Lehman pay scheme. So I think that for that reason, the number of claimants who could reopen their claims were this to become law of the case, would be a very finite universe and would not reopen the floodgates as the debtor supposes.

THE COURT: I understand your argument, but I disagree. This is not limited to the Straus Group, what used to be Neuberger Berman. This is a process that has been ongoing for a very long time with great success, and I believe that you have a very difficult burden in overcoming the prejudice argument associated with your request for reconsideration. But I'll hear what the debtors have to say -- probably not much more than I've already said.

MS. ECKOLS: Your Honor, I'm going to keep it incredibly brief. The debtors' position is set forth at length in its response at docket number 25377, and I believe most of the key points have already been discussed here.

Mr. Kramer's decision not to oppose the reclassification was deliberate and it was willful for purposes of Rule 60(b), and this is fatal to his request for reinstatement. The key enquiry in the Second Circuit -- it was whether Mr. Kramer made a conscious decision not to respond, and it is clear that his decision was conscious and knowing and intentional. It is not an issue on the Second Circuit. It's not a requirement of bad faith or good faith. That is

irrelevant for this. He admits he received notice. He admits he received an adjournment. He admits he consulted with co-workers and attorneys. He admits that he decided not to retain counsel and ultimately not to oppose the seventy-third omnibus objection.

As Your Honor noted, he attempts to paint himself as an unsophisticated pro se creditor, when in reality he is a sophisticated investment advisor that is in charge of managing billions of dollars in investments. He could have filed a response on his own. We have dozens, maybe hundreds, of pro se people in these cases who file their own documents. He didn't even need to retain an attorney in order to oppose the seventy-third omni. He made a deliberate decision and he should be held to that decision.

Briefly, Mr. Kramer has not met his burden of establishing a meritorious defense in lieu of his asserting his own defense to the seventy-third omni. He attempts to borrow a response filed by certain individuals, allegedly co-workers that are similarly situated to him, in opposing the 118th omnibus objection. To carry his burden to proffer a meritorious defense, Mr. Kramer must offer his own defense, not point to another's. He cannot bootstrap his claim onto the response of other claimants to another objection no more than the debtors could seek to expunge claims that are on one objection pursuant to another.

And finally, Your Honor, as to the prejudice point, Mr. Kramer cannot carry his burden on this factor. As Your Honor noted, there are thousands of other claimants whose claims have been disallowed or reclassified because the claimants failed to oppose the debtors' objections. Granting this motion would encourage others to seek relief whose circumstances are no more sympathetic than Mr. Kramer's at significant cost to the debtors and to this Court.

For those reasons, we respectfully request that the motion be denied.

THE COURT: The motion is denied and the reasons, I think, are clear from the colloquy on the record. Mr. Kramer may be within a class of claimants that currently is contesting reclassification of compensation claims based upon so-called restricted stock units. The outcome of that litigation is at the moment completely unclear. But it's too late for Mr. Kramer to join that party. It has -- as members of its class -- individuals each of whom opposed reclassification. Many of those individuals did so by simply writing letters saying, I oppose reclassification. All it took to get a ticket of admission to that particular ongoing litigation was something that one could classify as a real objection. By electing not to object, Mr. Kramer has waived the right to get back in.

And I find that there has been a failure to satisfy

the standards under 60(b), not only because of the knowing decision not to object, but because of the significant prejudice that would arise by reason of allowing parties who have knowingly chosen not to oppose reclassification or disallowance to get back in. Finality is important in bankruptcy. The motion is denied.

MS. ECKOLS: Your Honor, moving to agenda item number 5, that is the motion of Caisse Des Depots Et Consignations to permit a late-filed claim against Lehman Brothers Special Finance. I am not sure if their counsel is here --

MR. HELLMAN: Yes.

MS. ECKOLS: You'll forgive me for butchering your client's name.

MR. HELLMAN: That's okay. I do the same.

Good morning, Your Honor, Jay Hellman, SilvermanAcampora. For ease of reference perhaps we can just call the client CDC.

Your Honor, with me is my colleague, Brett Silverman, and before the Court is CDC's motion for the allowance of a late-filed claim in a sum of not less than 3,077,434 dollars.

Judge, there are a couple of issues that are not in dispute with respect to the motion. The first is that there is an ISDA master agreement between the parties and LBHI is a guarantor on that agreement.

The question really is in this case what constitutes

sufficient notice of a bar date to a known creditor. And I say known creditor because CDC is listed on schedule G of the petition as having an unexpired executory contract.

THE COURT: Mr. Hellman, I've read the papers and I'm familiar with the issues, and I'd like you to deal with response of the debtor that points out that your client received actual notice at two addresses.

MR. HELLMAN: Sure.

THE COURT: You're dealing with a notice provision in an ISDA agreement in treating that as if it governs the obligations of the debtor to provide actual notice of the bar date. Well, I have a problem with that position and you need to know that now.

MR. HELLMAN: Okay. I understand, Judge. The issue though is that any notices with respect to the agreement have to be sent to a specific particular address in France.

THE COURT: So what?

MR. HELLMAN: The reason is --

THE COURT: So what? I mean, I'm frankly astounded; I read your papers and it's as if inefficiency in France should be elevated to a procedural due process right.

MR. HELLMAN: Well, it's inefficiency on the debtors' side as well, Judge. There's a contract that governs the relationship of the parties that specifically says notice needs to be sent to a very particular address. If that notice is not

sent to that very particular address, the chances are -- because it's a quasi-governmental agency in France that spans many, many blocks -- they're not going to get that notice. And the cases that we cite in the reply specifically address issues where there is for example a national union and indemnity agreement that says notice has to be sent to a very particular address. And there's very good reasons for that and that's what we're expressing in the papers. Notice to the --

THE COURT: I understand that, but there is a fundamental problem with your position where notice appears to have been actually given at two other addresses, one in New York and one in Paris. And where the notice address in Paris, but for the back office reference, has led to the rejection of the receipt of mail that, if opened, could have ended up in the right place. I don't understand how you can take the position you're taking with a straight face.

MR. HELLMAN: With respect to the -- because the case law tells us that when there's a specific notice provision in a contract, we're entitled to notice at that particular address. And, yes, the reason why we had that provision in the agreement is for exactly this reason, because we would not get the notice. It would wind up getting rejected and we'd wind up in this very position, unfortunately.

THE COURT: What took so long to get here?

MR. HELLMAN: There --

THE COURT: This is now 2012.

MR. HELLMAN: Sure. They're primarily -- first of all, it's, as I said, Judge, it's a quasi-governmental agency. The wheels don't move very quickly, but when they do, we're talking about primarily French-speaking employees. With --

THE COURT: But they have an office on 57th Street. Wouldn't that -- don't they?

MR. HELLMAN: But they don't. That office had no dealings with respect to this contract. But be that as it may, that office was -- the client that exists now, CDC, separated from that office in New York in 2007, so it ceased to exist as a CDC proper, if you will, here today, entity.

MR. HELLMAN: But notice to the New York address under the contract is not sufficient. Notice to some alternate address in France is not sufficient, specifically because we have this contract that says, if you going to notify us about anything dealing with the ISDA agreement including presumably the notice of the bar date because that's the basis of our claim, then notice has to be sent to a specific address to make sure that we get it. Otherwise, we're in this very position.

THE COURT: Now are you saying -- and this is actually a fairly interesting question -- that parties can contract around the notice provisions of the bankruptcy rules and that parties can by separate contract impose notice obligations that wouldn't otherwise exist as a matter of law on debtors?

MR. HELLMAN: It appears to be that way, Judge. If you look at the reply that we submitted, there are cases in support of that proposition that the parties had a contract. So even though there are notice provisions under the Bankruptcy Code that may provide for certain due process rights, if the parties have a specific agreement, a specific contract, that says notice has to be sent to that address -- that very specific address -- that's a requirement. We have to have actual notice to a known creditor in that situation.

THE COURT: But you actually did receive three copies of the bar date notice. One that was rejected by the mail office, or mailroom of that location, and two that presumptively were received, plus there was publication notice, plus your client terminated the contract promptly after the commencement of the Chapter 11 case, and then completely ignored the fact that there was a bankruptcy that was publicized all over the world including France?

MR. HELLMAN: Let's take that in a couple of pieces. The first part is, yes, there were notices that were sent to other addresses that presumably were not returned. But we're talking about again a quasi-governmental agency in France that has 73,000 employees and receives thousands of pieces of mail per day. Hence the requirement in the contract that there's a very, very specific address that has to be complied with and that's where notice has to be sent, and that unfortunately is

the one that was returned.

With respect to the publication, the case law that we cite in the papers in both the motion and the reply say, if there's a known creditor and you know that address, publication is insufficient. And with respect to -- really, the bottom line is even though due process may have been satisfied, the point is, is that the contract had a very specific notice provision that they have to comply with and if they don't, then case law provides that we have the ability to file a late claim.

I understand from counsel that their position -- even if we get past this sort of tricky issue -- we still have the four-factor Pioneer tests to take a look at that would allow the late-filed claim. And I understand counsel's position would mostly be, as we saw from the last go-around, the prejudice to the debtor and to the Court for everybody else who may have to come here and want to file a late claim. I know the Court had a couple of decisions that were rendered in May of 2010, I think it was. But our situation again is different because we have a very specific contractual obligation on the part of the debtor to provide us with notice.

And irrespective of the early termination, that really dealt with -- if we look at the contract carefully -- it really deals with the termination of the transactions and not necessarily the contract. The contract provisions are still

operative. It's just there's no transactions any longer because of the bankruptcy filing.

THE COURT: Who within your client made the decision to terminate the ISDA agreement?

MR. HELLMAN: I'm sorry, Judge. Could you repeat?

THE COURT: Who within your client made the decision to terminate?

MR. HELLMAN: That I couldn't answer. It's a bureaucracy. It could have been anybody from -- I'm sure it was somebody from a position of authority but I couldn't say who.

THE COURT: Okay. So, in effect, you argue that because you represent an organization that appears to be inefficiently managed that it should get some kind of special break in this bankruptcy. Am I misunderstanding your argument?

MR. HELLMAN: Yeah, I don't know that that's necessarily the argument, Judge. I think that the point is and, yes, it's not effectively managed because of -- well, I can't say it's not effectively managed. What I can say is, again, it's a quasi-governmental agency with thousands of employees. And the point that we're making is not that it's not managed properly. The point we're making is because of the enormity of this agency, the contract had very, very specific mailing requirements for notice. And if those are not complied with, the mail's going to be rejected and come back and it's

going to put us in this very position.

THE COURT: Do you know what procedures exist within your client to deal with errant mail, because given the vast number of addresses in Paris and the significant volume of mail that comes, the problem that we're now identifying quite late must happen literally every day.

MR. HELLMAN: I can't -- I have no idea of how they handle errant mail. Presumably, as in this case, it's returned as undeliverable. Hence -- and they have every contract or every dealing they have, has specific notice requirements to make sure that it gets to the very right -- the correct address.

THE COURT: With respect to your argument, this seems to me to be undue reliance upon strict compliance by parties you have no control over with respect to a notice provision that may or may not be observed.

MR. HELLMAN: If I can make one other point, Judge, and my colleague reminds me: The debtor -- it's not that the debtor didn't know of the notice requirements of the address. Our reply contains other correspondence that was sent by the debtor to that very specific address after the bar date notices were sent. So the debtor is well aware that they have to send information to this particular address in order for us to receive it.

THE COURT: Presumably, information is sent to that

particular address so that somebody who knows something about this transaction can take action with respect to it?

MR. HELLMAN: Correct.

THE COURT: Do you know who that person is?

MR. HELLMAN: I do not.

THE COURT: Okay. Thank you.

MR. HELLMAN: Thank you, Your Honor.

MS. ECKOLS: Your Honor, the debtors' position as to CDC's motion is set forth at length in its response at docket number 19314. I'm not going to address -- repeat all those arguments, but I want to address a few specific points.

CDC's due process and excusable neglect arguments boil down to the same question: Can a sophisticated organization that engaged in complex derivatives transactions with the debtors assert that it did not receive actual notice of the bar date when notice was admittedly delivered to three different addresses. The answer has to be "no". The only alleged defect that CDC claims with debtors' service of the bar date notice is that the address that was listed in the debtors' schedules -- the address that one of the three notices to CDC was sent to -- did not include an attention to the specific department that was provided in the master agreement between the parties. It's not an issue of whether the street address was incorrect. The street address was correct, as CDC acknowledges.

CDC's entire argument is based on the premise that

because it is a large organization with many departments and offices, that it need not conduct any due diligence whatsoever regarding the mail it receives if the sender does not direct it to a specific department within CDC. The bottom line is that CDC's alleged lack of notice is the result of CDC's internal mail-handling guidelines and its decision not to open the envelope that contained the bar date notice.

As set forth in the affidavit accompanying the debtors' response, the debtor served CDC with the bar date notice at three different addresses, two in Paris and one in New York. Two of those bar date notices were sent to the addresses that were specified in a derivatives contract between CDC and LBSF, one in Paris and one in New York.

The address on the bar date notice that was sent to Paris was correct, but it didn't include the attention line that specified that it should be routed within CDC to the Back Office Monetaire.

The envelope did, however, contain the following legend: "Legal documentation enclosed. Please direct to attention of addressee, president or legal department." When CDC received this envelope, it did not route it to its legal department or even open it to try to determine what department it should go to. Instead, CDC stamped it "Return to Sender" without even looking at it. This was a decision that was entirely within CDC's control. Having refused to open its

mail, CDC cannot now claim that its refusal to accept the actual notice that the debtors' mailed to the correct street address, deprives it of due process or gives rise to an excusable neglect defense.

As to CDC's due process argument, CDC's argument conflates notice that complies with due process with notice that strictly complies with the ISDA. Due process does not require compliance with those contract provisions. There are two different standards. Due process as set forth in Mullane and its progeny requires that notice be reasonably calculated to apprise parties of the pendency of the action. To satisfy due process, notice does not need to be provided in the way that a creditor prefers or in a way that is specified in a contract. Taking the movant's argument to its logical conclusion, the debtors could have served a bar date notice on every single office of CDC, but CDC would not be deemed to have received actual notice unless at least one of those notices was addressed to the department listed in the master agreement. Serving CDC with the bar date notice at three separate addresses -- street addresses that CDC does not dispute were correct -- was reasonably calculated to provide CDC with notice and fully complies with the due process.

Your Honor, the Drexel decision discussed in the debtors' response is on point. I don't want to repeat that discussion except to note that the court in Drexel determined

that Barclays received actual notice even though no notice was served on its London office, which was allegedly the proper office for handling the notice. In that case, the court determined that notice that was served on Barclays' offices in Connecticut, New York, and Australia, was sufficient and that it was the responsibility of Barclays' employees to route the notice to the proper department within the Barclays organization. Here CDC is not even arguing that the bar date was not sent to the proper office. Rather, CDC admits that notice was delivered to the proper street address, but it claims that it had no obligation to open the envelope and determine which department should handle it or apparently to forward it to its legal department as directed on the envelope. This argument fails under Drexel and is contrary to Mullane.

And, briefly, the case that CDC relies on -- the National Union case -- specifically actually provided that the notice provided by the debtors, despite having not complied with the contractual provisions, did in fact comply with due process.

Moving to excusable neglect, it's based on the same facts as CDC's due process argument and falls far short of Pioneer's excusable neglect standard. As Your Honor is aware, the most important Pioneer factor in the Second Circuit is whether the reason for the delay and the extent to which it was within the reasonable control of the movant. Here, CDC argues

that the reason for its delay in its filing was entirely the fault of the debtors in not directing the notice to a special department or specific department within CDC. However, it was CDCs decision to not open the envelope containing the bar date notice, and it was CDC's decision not to direct the notice to the legal department as was directed on the envelope. It was CDC's decision to simply stamp the envelope "Return to Sender" without conducting any diligence.

CDC is a sophisticated party that entered into complex derivative transactions with LBSF. It should be sophisticated enough to open its mail and direct it within its organization. And CDC's decision whether or not to do so is within its reasonable control under Pioneer.

Lastly, as to prejudice, CDC makes the same argument that other claimants have brought before this Court in its claiming excusable neglect. Specifically, that it's only one claim, that this is a massive bankruptcy, and that in the grand scheme of things this claim will have a negligible impact on the debtors but a major one on CDC. As Your Honor has noted when dealing with other claimants seeking leniency on the bar date, the prejudice to the debtors cannot be traced to the filing of any one single claim but to the impact of permitting exceptions that risk opening the floodgates.

Having failed to carry its burden on excusable neglect and because CDC received notice that complied with due process,

the motion should be denied.

THE COURT: I agree. The motion should be denied and that's based upon the present record. I'm going to deny the motion, however, without prejudice to further presentations that may be made by CDC concerning its internal processes.

One of the aspects about this that troubles me is that there is a general statement that CDC needed notice at a particular address in order to function. I have a hard time accepting that. I have absolutely no showing that has been made by the movant concerning what CDC is really all about in terms of the way it processes mail, who deals with it, who is responsible for this contract, what that individual did or didn't do in connection with monitoring the contract after termination, what if anything was done by that individual to pay attention to the bankruptcy, to consult with bankruptcy counsel or even think about it after terminating the contract. This appears to be a situation of complete and absolute neglect and inexcusable inefficiency.

For that reason, based upon the showing, there's absolutely no basis to grant the motion. That doesn't mean that it may not be possible at some time -- with great embarrassment, presumably, to the people involved -- to demonstrate why it is that years went by and they did nothing about a claim they now think is significant.

The motion is denied without prejudice to being re-

urged if as in when it may be possible to demonstrate good cause. I see no basis for good cause on the present record.

MS. ECKOLS: Thank you, Your Honor, and I believe that concludes today's contested claims agenda.

THE COURT: Okay. We're going to clear the courtroom except for those who are going to stay for the chambers conference. We could go into chambers but I think there are probably too many people involved.

So we'll take a five-minute break and then everybody who's involved in the chambers conference can come forward. I'll return in five minutes.

MS. ECKOLS: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 11:16 AM)

I N D E X

E X H I B I T S

RULINGS

C E R T I F I C A T I O N

I, Sara Davis, certify that the foregoing transcript is a true and accurate record of the proceedings.

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SARA DAVIS

AAERT Certified Electronic Transcriber CET**D 567

ALSO TRANSCRIBED:

PNINA EILBERG

AAERT Certified Electronic Transcriber CET**D 488

SHARON MYER

AAERT Certified Electronic Transcriber CET**D 638

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: February 23, 2012